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Current Topics.

House of Lords Appeals.

DESPITE the partial embargo which in recent years has been placed upon the right of a litigant to go from the Court of Appeal to the House of Lords, there seems to be very little, if any, diminution in the number of cases which find their way to the Lords to hear the last word on the subject of the litigation. In this we have another illustration of that hope which, the poet assures us, springs eternal in the human breast. The sittings of the House in its judicial capacity were resumed recently with a list of twenty-two cases, four coming from Scotland. These sittings were particularly interesting in that the Lord Chancellor, VISCOUNT CALDECOTE, presided for the first time at the hearing of the appeals. For some time he has been presiding in the Judicial Committee of the Privy Council, but not until this term did he make what may be termed his judicial début in the Lords. In accordance with precedent, he wore his robes and full-bottomed wig, whereas it is not the practice of the Lords of Appeal in Ordinary to appear otherwise than in civilian dress.

Detention during His Majesty's Pleasure.

ATTENTION should be drawn to a statement (reported in *The Times* of 3rd February) which was recently made by HAWKE, J., at Gloucester Assizes, on the subject of detention during His Majesty's pleasure. A man had pleaded "Guilty" to attempting to murder his daughter, at whose home he lived. After being certified as insane he was now said to have recovered. Defending counsel stated that the accused could be received back into a mental hospital as a voluntary patient and placed under the supervision of the medical superintendent, and in the result the man was bound over and placed under the medical superintendent's care. The learned judge, referring to a statement by counsel that the course of advising the accused to plead guilty had been adopted so that the accused should not be sent to Broadmoor to be detained during His Majesty's pleasure, observed that he was afraid the attitude adopted by the accused man's advisers was based upon the misconception that if a man was ordered to be detained during His Majesty's pleasure he would remain in a criminal lunatic asylum for the rest of his life. That, the learned judge said, was not so. Both restraint in mental cases and imprisonment in other cases were humanitarian measures. No one was kept anywhere longer than it was necessary that he should be kept under close supervision. His lordship added: "I do not want this man to be kept a moment longer than safety requires."

War Damage to Property.

IN a reply to the memorandum of the Association of the British Chambers of Commerce, concerning the insurance of property against war risks, the Chancellor of the Exchequer reiterates the Government view, which is confirmed by the Weir Report, that the extent to which compensation can be given in respect of war damage to property can only be determined at the end of the war, when the total extent of the damage is known, and in the light of the then financial circumstances of the country. That fundamental consideration makes it impossible for the Government to promise now that full compensation, or a specified proportion thereof, will be payable. Nor does the Chancellor of the Exchequer see how that position can in any way be modified by a scheme which seeks to divide the provision of compensation between the Exchequer and a fund provided by an annual charge on fixed property. The total compensation ultimately payable, however provided, will, it is urged, represent a draft on the financial resources of the country and the amount of such draft must depend on the total calls on those resources and the total demand which the Government will feel able to make on the taxable capacity of the country, including that of property owners. The Government policy as outlined in the statement of the Chancellor of the Exchequer on 31st January, 1939, cannot be modified and no undertaking to introduce legislation on the subject at the present time can be given.

Legal Representation before Hardship Tribunals.

A RECENT writer to *The Times*, speaking from his experience as a chairman of an exemption committee during the last war, provides an interesting commentary on the remarks made by Mr. RANDLE F. W. HOLME, President of The Law Society, at the recent special general meeting of that body, reported in our last issue. The writer heard between 2,000 and 3,000 applications for exemption, and states that he can well remember that the labours of the committee were lightened and shortened when the applicant had legal assistance. His case was put before the committee better than, in most instances, he could put it himself. An application to a hardship committee, the same writer urges, is in the majority of cases an important event in a man's life. He has probably never appeared before any tribunal, and it is difficult for him to put his case himself. Often he is tongue-tied, or very apt to introduce matters which he thinks helpful to his application but which are really irrelevant. The writer often found on careful examination of the applicants appearing in person that the most meritorious cases were those where the applicants

themselves were least able to state them. That all took up time, which the help of a lawyer would have avoided. "Further," the letter continues, "I do not see the object of preventing an applicant having a lawyer to represent him should he wish it. The expense does not fall on the State. If the applicant is to have any help at all, I cannot see that the trade union official or a relative or a personal friend is better qualified than the applicant's own solicitor or counsel." It is urged, moreover, that the difficulty of deciding these hardship cases increases when the older men are called up, particularly those of between thirty and forty years of age who are married, with children, and have businesses of their own—all factors that a hardship tribunal has to take into account when listening to an application. The writer concludes by expressing the hope that it is not too late for para. 18 of the National Service (Armed Forces) Miscellaneous Regulations, 1939 (which provides that no applicant to a hardship tribunal may be represented by counsel or solicitor), to be reconsidered.

The Agriculture (Miscellaneous War Provisions) Bill.

THE Agriculture (Miscellaneous War Provisions) Bill, which was introduced into the House of Commons by Sir REGINALD DORMAN-SMITH, Minister of Agriculture, on 24th January, contains provisions of considerable interest and importance. From a legal aspect, the proposal deserving of first mention is, perhaps, that concerned with the enlargement of the powers of catchment boards constituted under the Land Drainage Act, 1930. At present, the activities of these bodies are confined to their statutory "main river." Under the Bill powers are conferred on catchment boards to promote and execute outside internal drainage districts schemes for the reconditioning of minor watercourses in the same way as internal drainage boards acting within their own districts. The object of these new powers is to facilitate the carrying out of certain kinds of land drainage essential to the production of food. The cost of such schemes is to be borne as to 50 per cent. by Exchequer grants, and as to the remainder, on a pre-determined basis, by the landowners concerned. It is also proposed to give power to retain possession for three years after the expiration of the Emergency Powers (Defence) Act, 1939, of land of which possession may be taken by War Agricultural Committees under the Defence Regulations, because of its inadequate cultivation. The existing facilities afforded to allotment holders under the Land Fertility Scheme are extended under the Bill to cover cottage gardens. The effect of this will be that those growing foodstuffs in small gardens will be able, by joining an allotments association which will purchase the necessary quantities, to obtain a Government subsidy of 50 per cent. of the cost of lime and 25 per cent. of the cost of basic slag. The remaining provisions of the Bill which relate chiefly to prices and subsidies need not be further particularised here. The Bill was read a second time in the House of Commons on Tuesday.

Highway Obstruction during Black-out.

BRIEF reference may be made in these columns to an interesting point upon which Judge HUNTER recently gave a ruling at Clerkenwell County Court. The question arose on the following facts. A pedestrian received a facial wound during the black-out as the result of walking into a car which was standing in a carriageway intersecting the pavement. The driver of the car said that he stopped before emerging into the traffic of the roadway, as the law required him to do, that his lights were on, though the pedestrian approaching from the side might not have seen them, and that when he saw that the pedestrian was walking into the car he shouted a warning to him. The learned county court judge, who awarded damages for the personal injuries sustained, said: "In my view, in these days of the black-out, the law remains as it was before with regard to obstruction of the highway. If a person puts an obstruction on the highway he must light it or give other warning of it, and that applies even if the obstruction is only a temporary one. This car created an obstruction and I am satisfied that the warning, if given, was insufficient." His honour intimated that he could not take the view that the pedestrian's failure to use his torch constituted contributory negligence. A report on the matter appeared in *The Times* of 3rd February.

Trading with the Enemy.

ATTENTION should be drawn to the fact that a new order has been made by the Board of Trade under the Trading with the Enemy Act, 1939, relating to persons and firms carrying on business in foreign countries which are to be deemed enemies for the purpose of the Act. This, the Trading with the Enemy (Specified Persons) (Amendment) (No. 1) Order, 1940, contains seventy-three additions to, and four deletions from, the Trading with the Enemy (Specified Persons) (Amendment) (No. 4) Order, 1939, which, as previously indicated in these columns, revoked all previous Trading with the Enemy (Specified Persons) Orders. The new order, which came into force on 5th February, is published by H.M. Stationery Office, price 2d. net.

National Service Driving Licences.

IT was recently announced that the issue of National Service driving licences is being discontinued and that all new drivers will have to obtain provisional licences with a view to passing the driving test. Existing holders of National Service licences are, however, being permitted for the time being to take the driving test without first obtaining a provisional licence. Those who pass the test may retain their National Service licences or, should they so desire, take out an ordinary licence entitling them to drive at any time. Those who fail cannot, it is said, expect to retain their National Service driving licences. Moreover, the Minister of Transport proposes at an early date to require the withdrawal of all National Service licences where the holders have not passed a driving test. It may be added that applications for tests may be obtained either from the local taxation officers of county or county borough councils, or from the offices of the Regional Transport Commissioners.

Recent Decisions.

IN *Chapleton* v. *Barry Urban District Council* (*The Times*, 31st January) the Court of Appeal (SLESSER, MACKINNON and GODDARD, L.JJ.) reversed the decision of a county court judge and held that the appellant was entitled to damages in respect of injuries sustained as the result of the defective condition of a deck chair hired by him from the respondent council. In the court below it was held that the council had been negligent but that it was protected by conditions set out on the back of the ticket. The Court of Appeal held that the ticket was not a term of the contract, but only evidence of payment.

In *Lady Naas and Another* v. *Westminster Bank, Ltd.* (*The Times*, 7th February), the House of Lords reversed a decision of the Court of Appeal and restored that of MORTON, J., to the effect that the respondents were trustees of certain stock for the appellants and had committed a breach of trust in handing over the proceeds of sale of such stock to a settlor. Readers must be referred to the report for the facts of the case which do not lend themselves to brief summary.

In *Maude* v. *Inland Revenue Commissioners* (*The Times*, 7th February) WROTTESLEY, J., allowed the claim for repayment of income tax for the year ending 5th April, 1937, preferred by the appellant who was resident in Guernsey for that year and had paid interest to the Guernsey branch of the National Provincial Bank on an overdraft which the bank had allowed her. The appellant was entitled to repayment of tax on the amount of the interest under s. 36 (1) of the Income Tax Act, 1918.

Some Points of "Black-out" Law.

MUCH of the law relating to the lighting restrictions, or the black-out as it is popularly called, is to be found in the Lighting (Restrictions) Order (S.R. & O., 1939, No. 1098), which was made by virtue of the power conferred on the Minister of Home Security by reg. 24 of the Defence Regulations (S.R. & O., 1939, No. 927). These regulations were themselves made under the authority of the Emergency Powers (Defence) Act, 1939, s. 1. Authority is given by reg. 24 (1) to make orders—

(*a*) to regulate or prohibit the display of lights;

(*b*) to prescribe lights to indicate the position of premises or to give warning of the presence of vehicles;

(*c*) to regulate or prohibit the use of roads in order to avoid or minimise dangers created by lighting restrictions;

(*d*) to prevent or minimise the emission of flames, sparks or glare which either interfere with defence measures or which may be used as a means of signalling to the enemy.

Regulation 24 (2) goes on to say that in any proceedings which may be taken in respect of a breach of such orders, it shall be a defence for the defendant to prove that the breach in question occurred "without his knowledge *and* that he exercised all due diligence to secure compliance with the order." This paragraph also empowers a constable or a member of His Majesty's forces to enter premises, or board a vehicle or vessel, and take such steps as may be necessary to secure the enforcement of the order. The position of the police as to the entering of private premises is, in general, somewhat doubtful—it was recently considered in *Thomas* v. *Sawkins* [1935] 2 K.B. 249. In this case the public were invited to attend a meeting; policemen, who of course are members of the public, attended and in due course took steps to prevent a breach of the peace. It was held that they were entitled to be there and so to act. There would seem to be a general right for them to enter premises, in opposition to the wishes of the owners or occupiers, if they enter to prevent a breach of the peace. This right is probably not to be regarded as altered or whittled away by the fact that many statutes have given the police power to enter premises in certain circumstances, for all these instances appear to be ones where a breach of the peace is not necessarily involved. In order to avoid any of these doubts and difficulties, express authority is given to the police in respect of lighting offences.

The matter of penalties and prosecutions is also dealt with in the Defence Regulations themselves. Regulation 92 states that any person who contravenes any of these regulations, or an order, rule or bye-law made thereunder, shall be guilty of an offence and, subject to any special provisions contained in the regulation, order, rule or bye-law, shall be liable—

(*a*) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds or to both;

(*b*) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine not exceeding five hundred pounds or to both.

By reg. 93, a prosecution must be instituted either by a constable or by or with the consent of the Director of Public Prosecutions. Regulation 91 deals with offences by corporations, and in such cases every person, who at the time of the commission of the offence was a director or officer of the body corporate, shall be deemed to be guilty of an offence unless he can prove that it was committed without his knowledge *or* that he exercised all due diligence to prevent its commission.

And by reg. 83 it becomes an offence wilfully to obstruct in the performance of his duties in relation to these regulations, orders, rules or bye-laws, any servant of His Majesty or any other person exercising powers conferred or imposed on him by these regulations, orders, rules or bye-laws.

Now, in looking in further detail at the Lighting (Restrictions) Order itself, it will be found that many paragraphs deal with matters for which express provision is desirable and which are taken out of the general rules which are laid down in para. 1. Some of these matters are of interest and should be mentioned. Thus para. 3 relates to lights, the display of which is authorised by a chief officer of police, as defined in the Police Pensions Act, 1921, or by a member of His Majesty's forces, acting in such capacity, so long as the lights comply with any conditions imposed by them. Paragraph 4 deals with lights for the regulation of road traffic, allowing lights on automatic traffic signals to be shown if screened by an opaque disc having an opening in the form of a cross, the arms of which are three inches long and one-eighth of an inch wide. Prohibitory road signs, direction signs and the like may be illuminated if screened from above and inconspicuous from a distance of 250 feet. Similarly lights on bollards and island refuges must be screened from above and dimmed so as to be inconspicuous at a distance of 250 feet. Paragraph 5 deals with lights on road vehicles and has been subject to much alteration and modification. Paragraph 11 deals with the interior illumination of tramcars, trolley vehicles, or any other public service vehicles: the lights must be screened and dimmed so that no direct light is visible outside and the illumination from any lamp does not exceed 0·006 foot candles at any point at a distance of four feet from the lamp. Paragraph 13 allows external illuminated signs to be used to indicate the position of police stations, fire stations, first-aid posts, hospitals, public shelters or buildings used by a civil defence service if the signs are screened from above and inconspicuous at a distance of 250 feet. Paragraph 14 allows lights to be used for urgent rescue or repair work carried out by members of civil defence services, government departments, local authorities, public utility companies or railway companies if the lights are screened as far as practicable above the horizontal and are extinguished on the receipt of an air-raid warning. Paragraph 15 is of some considerable interest and authorises the use of head-lamps on the condition that the light emitted by the lamp shall be so directed and screened that when the lamp is four feet above the ground no direct light shall be visible three feet above the ground at a distance of ten feet; that the intensity of the light emitted in any direction shall not exceed one candle power; and that the light shall be white in colour. This last requirement appears often to be broken. Paragraph 16 deals with the lights allowable on railways, including lights used for the illumination of railway stations and the interior of trains. Similarly, para. 17 deals with the lights which may be displayed or used in a dock, harbour, pier, quay, wharf or similar place.

The general rules laid down by para. 1 are—

"Subject as hereinafter provided, no person shall during the hours of darkness cause or permit—

"(*a*) any light inside any roofed building, closed vehicle or other covered enclosure to be displayed unless the light be so obscured as to prevent any illumination therefrom being visible from outside the building, vehicle or enclosure;

"(*b*) any light, not being a light in a roofed building, closed vehicle or other covered enclosure, to be displayed."

The hours of darkness are defined by para. 19 (1) as being the hours between sunset and sunrise, but it has been announced that this has been changed so that the hours of darkness are the hours between half an hour after sunset to half an hour before sunrise, though the order amending para. 19 (1) does not seem to have been published yet. As regards para. 1 (*a*), the gist of the matter seems to lie in the words "illumination therefrom being visible from outside the building." Taken literally, this would require that no light, either direct or indirect, nor any glow, however faint, must be perceptible from outside the building. Thus, apparently, complete darkness is aimed at by the order. However, the tendency appears to be to interpret the order to mean that a "reasonable" degree of obscuration is to be applied to the lights. Various views as to what this reasonable degree is,

seem to be held by various police forces and benches of justices, as is easy to see if one travels about the country. A few cases of prosecutions under the order have already been reported and some instructive results emerge. A Cambridge case, J.P. (1939), vol. 103, p. 766, deals with a fairly bright blue radiance from a shop window and a slit of light about one inch wide from between a worn doorstep and the bottom of the door. It was urged that the intention of the order was to prevent light being seen by enemy aeroplanes, that the order should be interpreted in this sense, and that the amount of light emerging did not warrant a conviction. But the justices would not agree to this view. This case is also curious in that four air-raid wardens were called to give evidence that the degree of obscuration was sufficient. Since the order demands complete obscuration, then presumably if any discretion is to be exercised it is to be exercised by the bench and not by witnesses, even if air-raid wardens. But perhaps it was sought to put in their evidence under the special laws of evidence relating to "experts." A penalty of £2 was imposed. In a case from Cannock, J.P. (1939), vol. 103, p. 753, a toll collector of a canal company was charged with showing a light from a stable door and from his scullery window. The bench considered that a light had been shown, and thus apparently did not agree with the defendant's contention that "illumination" did not include a slender and fitful gleam or a distant light from a temporary chink. As regards the light from the stable, which was not under his control, it would seem that his contention that the canal company should have been summoned, should have succeeded. They, by their servant, a bargee, caused that light to be displayed, the toll collector apparently having nothing to do with the matter. Whether he would be an officer of the company seems doubtful, and even if he were, it would seem as if the saving clause of reg. 91 of the Defence Regulations would apply to him, but the report is too meagre to enable one to say with certainty. An interesting case comes from Grantham, J.P. (1939), vol. 103, p. 741, where a married woman was prosecuted for showing two lighted windows, one covered with thin coloured material and the other with sacking. No defence appears to have been made on the grounds of low intensity of illumination, but it was contended that the husband should have been summoned instead of the responsibility being put upon the wife. But the order makes no mention of the occupier of the building, but of a person who causes or permits the showing of the light. Hence what person is liable must depend on the facts of the case, and thus, a wife, a lodger or a maid might clearly be liable. Whether the occupier himself would also be liable as "permitting" the light to be visible would again depend on the facts, and it is easy to envisage circumstances where he is clearly not liable, as, for example, where he is not on the premises or is asleep in another room.

Paragraph 1 (*b*) deals, on the other hand, with lights in the open, as compared with lights in buildings shining through windows or other apertures. In a case at Cannock, J.P. (1939), vol. 103, p. 753, several miners were prosecuted for contravening para. 1 (*b*) in that they brought miners' lamps out into the open, on coming out of the pithead at the Littleton Colliery. The beams from one of the lamps is said to have shone upwards and forwards for twenty to thirty yards, though other lamps were said to have been wrapped around with tissue paper or to have been held underneath jackets. Various irrelevant defences seem to have been raised, that the miners were carrying out instructions, that a constable had used a torch giving three times as much light. No mention of para. 15 of the order, which takes hand lamps out of the ambit of para. 1, seems to have been made. They were all convicted and fined five shillings each.

As regards the flames, sparks or glare of reg. 24 (1) (*d*) of the Defence Regulations, no orders appear to have been made yet, and it is presumably for that reason that the proceedings in the *Swadlincote Case*, J.P. (1939), vol. 103, p. 726, were taken under the Civil Defence Act, 1939, s. 47, though it is just possible that the glare in question might have been regarded as a light so as to bring it within para. 1 (*a*) of the Lighting (Restrictions) Order, 1939. Here a pottery company was prosecuted for allowing a glare from a kiln to be visible; it could be seen for several miles. Again, irrelevant matters seem to have been put forward in defence—that no glare came from the fire-holder, that the kiln had previously been fired without any complaint, that the darkness of the night intensified the glare, and that by allowing the fire to die down to stop the glare, the products were spoiled. The bench regarded the charge proved and inflicted a fine of £10. Certain relaxations of these restrictions have been made from time to time. These seem to have been made by circulars from the Ministry of Home Security to the police authorities indicating what amount of illumination under certain circumstances is to be regarded as permissible. Announcements of these matters have also been made in the press. These variations have been made particularly in the case of the lighting of shop windows and lights on vehicular traffic; as regards this latter type of lighting, the variations have been so many and numerous and admittedly of an experimental nature that no attempt can be made in this article to describe the rules at present in force.

Hire-Purchase Agreements and the Emergency Legislation.

III.

EMERGENCY POWERS OF THE COURTS.

MANY hire-purchase traders have taken up the emphatic attitude that in view of the apparently stringent provision in s. 1 (2) (*a*) (ii) of the Courts (Emergency Powers) Act, 1939, they will take no steps to recover their goods when otherwise entitled to do so, without invoking the blessing of the courts. While reluctance to enshrine one's name in a leading case is easy to understand, it is nevertheless a mistake to suppose that the new emergency provision is quite clear, and unequivocally on the side of the hirer in every case.

The subsection provides that "a person shall not be entitled, except with the leave of the appropriate court—(*a*) to proceed to exercise any remedy which is available to him by way of (i) the levying of distress; (ii) the taking of possession of any property or the appointment of a receiver of any property; . . . Provided that this subsection shall not apply to any remedy or proceedings available in consequence of any default in the payment of a debt, or the performance of an obligation, being a debt or obligation arising by virtue of a contract made after the commencement of this Act" (i.e., 2nd September, 1939).

It is important for hire-purchase traders and their advisers to observe that under s. 3 (*a*) a contract shall be deemed to have been made before the commencement of the Act if an offer made before the day of the commencement thereof so as to be binding on a contracting party, if accepted within a specified period expiring on or after that day, is accepted by the contracting party at any time within that period. If the intended hirer signs a proposal form before 2nd September and no time is specified for acceptance by the dealer, and the acceptance takes place after 2nd September, the contract will be deemed to have been made after the commencement of the Act and the leave of the court will not be required for the recovery of the goods in that case.

The really difficult question, on which conceivably some argument might turn in the future, is, in what cases of taking possession can the hire-purchase trader be considered to be exercising a "remedy" so as to require the leave of the court before doing so? It is elementary that a right of taking

possession is not necessarily a remedy. That distinction is implicit in the reason for the passing of the Possession of Mortgaged Land (Emergency Provisions) Act, 1939. It was passed to deal with the gap left by the Courts (Emergency Powers) Act, 1939, s. 1 (2) (*a*), which only dealt with *remedies* and did not enjoin mortgagees to obtain the sanction of the court for the exercise of their *right* to possession.

Many writers on jurisprudence have referred to the distinction between primary rights, and sanctioning, secondary, restitutory or remedial rights. In "Holland on Jurisprudence," 13th ed., p. 147, the learned author distinguishes between them as rights "antecedent" and rights "remedial." He illustrates the distinction by describing the rights of the owner of a garden not to have it trespassed upon, of a servant to have his wages paid, of a purchaser to have his goods delivered to him, as rights antecedent, which exist before any wrongful act or omission, and are "given for their own sake." On the other hand, the right of the owner of a garden to get damages from a party of men who have broken into his grounds, of a servant to sue his master for unpaid wages, of a purchaser to get damages from a vendor who refuses to deliver the goods sold, are described as rights remedial. "They are given," says the author, "merely in substitution or compensation for rights antecedent, the exercise of which has been impeded, or which have turned out not to be available." He goes on to point out that if all went smoothly, antecedent, or primary rights would alone exist. "Remedial, or sanctioning, rights are merely part of the machinery provided by the State for the redress of injury done to antecedent rights."

Where a hire-purchase agreement is terminated, either under the clause providing for automatic determination in certain events or by express notice given in accordance with the agreement, the owner obviously has a right to possession of the goods. The hirer's right to possession has come to an end, and the owner's right to the goods is a "right antecedent." There can therefore be no objection to his proceeding to the premises where the goods may happen to be and requesting their return. In such a case he will not be exercising a remedy but merely asking for his right. Of course it must be remembered that in cases to which the Hire-Purchase Act, 1938, applies, if one-third of the hire-purchase price has been paid, whether in pursuance of a judgment or otherwise, or tendered by or on behalf of the hirer or any guarantor, "the owner shall not enforce any right to recover possession of the goods from the hirer otherwise than by action." (Hire-Purchase Act, 1938, s. 11 (1).) The section does not apply where the hirer has determined the agreement or bailment by virtue of any right vested in him, i.e., under the agreement or under s. 4 of the Act (s. 11 (3)). In the latter case the owner would be justified in asking, as of right, for the return of the goods. Whether in the absence of such a determination of the agreement the owner would be justified in making an arrangement with the hirer to retake possession of the goods in disregard of s. 11 is doubtful. Probably he would not, in view of the decision in the Court of Appeal in *Day* v. *Davies* [1938] 2 K.B. 74, 82, following *Bisgood* v. *Henderson's Transvaal Estates, Ltd.* [1908] 1 Ch. 743, that where a prohibition under a statute is absolute it (the statute) cannot be waived by the party for whose benefit it is made. In all cases where s. 11 of the Hire-Purchase Act, 1938, enjoins an application to the court for the purpose of recovering possession of the goods, application must be made to the appropriate court under the Courts (Emergency Powers) Act, 1939, for the purpose of obtaining leave to exercise the remedy. In all other cases where the agreement has come to an end there can be no objection to the owner requesting the return of the goods.

If, however, the owner of the goods resorts to "recaption," i.e., the peaceable retaking of goods without the consent of the owner, he will be doing something for which he should first have obtained leave from the appropriate court. This remedy is not unknown in the motor trade, where peaceable retaking possession of one's own property on the public highway has been found possible. That it is a remedy and not merely an antecedent right there can be no doubt (see "Holland on Jurisprudence," 13th ed., p. 327), and it must be carefully distinguished from the owner's *right* to retake the car *with the consent* of the hirer when the agreement is automatically or expressly determined.

Under most modern hire-purchase agreements the owner's right to possession of the goods arises only by virtue of termination of the agreement, whether automatic or express. This is partly because of the avoidance by s. 5 (*a*) of the Hire-Purchase Act, 1938, of any provision in any hire-purchase agreement made after 1st January, 1939 (s. 20 (3)), whereby an owner, or any person acting on his behalf, is authorised to enter upon any premises for the purpose of taking possession of goods which have been let under a hire-purchase agreement, or is relieved from liability for any such entry. The main reason, however, is because in *Hackney Furnishing Company* v. *Watts* [1912] 3 K.B. 225, it was held that where an agreement simply provided that the owner should have a right to resume possession of the goods in case of certain breaches of agreement by the hirer, the landlord was enabled to distrain upon the hired goods for rent because the right of the owner to resume possession kept the agreement alive so that the goods were still "comprised" in the agreement within s. 4 of the Law of Distress Amendment Act, 1908. After an unsuccessful attempt to word the agreement so as to avoid this result in *Jay's Furnishing Company* v. *Brand & Co.* [1915] 1 K.B. 458, an agreement was devised which secured the court's approval in *Smart Bros., Ltd.* v. *Holt and Others* [1929] 2 K.B. 303 (see also *Times Furnishing Company, Ltd.* v. *Hutchings and Another* [1938] 1 K.B. 775), and now in most cases, as has been stated above, the owner's right to possession arises, not by virtue of the agreement, but by virtue of the agreement being at an end.

In such cases as may still exist where in spite of ss. 5 (*a*) and 11 (1) of the Hire-Purchase Act, 1938, and the above cases, the owner's right to resume possession of the goods on breach of the agreement by the hirer arises validly by virtue of the agreement, it is not easy to decide whether such a right to possession is antecedent or remedial. Parties to agreements frequently agree to avoid recourse to the law courts by agreeing damages beforehand in case of breach by either party, and provided that such an agreement is not of a penal character it is perfectly valid. Such an agreement, it might be argued, has something about it of a remedial character. It is, however, undoubtedly a right arising under an agreement, and is not remedial in the sense that it is a remedy provided by the State. In view of the altered form of modern agreements this question cannot frequently arise, but it is not impossible that it will come before the courts for decision.

Finally, it should be some compensation to hire-purchase traders for the obstacles put in their way by the Courts (Emergency Powers) Act, 1939, to realise that landlords cannot exercise their remedy of distress without the leave of the court under s. 1 (2) (*a*) (i). This additional delay of the landlord's remedy should give owners of goods let out to defaulting tenants under hire-purchase agreements additional protection, by giving them time to terminate the agreements and taking action of the sort indicated by the court in *Times Furnishing Company, Ltd.* v. *Hutchings*, *supra*, to secure that the goods shall no longer be in the hirer's possession with the owner's consent.

Mr. D. T. Griffiths, Town Clerk of Southwark, has been elected President of the Association of Metropolitan Town Clerks for the year 1940. Mr. Griffiths has been Town Clerk of Southwark since 1929, and was admitted a solicitor in 1916. He is a Freeman of the City of London and a member of the Worshipful Company of Horners.

A Conveyancer's Diary.

1939 Chancery.—IV.

THE second important case on the Settled Land Act is *Re Jefferys* [1939] Ch. 205. There is, of course, no doubt that this case was correctly decided, but it is one of the very unfortunate ones, inasmuch as it provides us with yet another example of a case where beneficial interests have been altered by the legislation of 1925. It is always with something of a shock that one finds that that has happened, because the 1925 legislation was designed to provide more satisfactory conveyancing machinery but yet to preserve the beneficial interests intact. In *Re Jefferys* the testator died in 1912. By his will and the material codicil he directed his trustees to stand possessed of his real estate and the residue of his personalty in trust out of the income thereof to pay Martin £150 a year. The will then proceeded to declare that the trustees should stand possessed of the real and personal estate from and after the death of Martin on trust for sale and to hold the net proceeds of sale "and the balance of the income accumulated during the lifetime of the said" Martin upon trust to divide among certain charities. The will also contained an express authorisation for the trustees to sell any part of the realty or leaseholds in Martin's lifetime with Martin's consent, and to stand possessed of the proceeds of such a sale upon the trusts and subject to the powers and provisions declared concerning the proceeds of sale of the estate after the death of Martin.

The objects of these provisions were perfectly clear. The testator wished Martin to have £150 a year for life. He wished the balance of the income to be accumulated until Martin's death, and he wished the proceeds of the whole estate and all the accumulations to go to the hospitals after Martin's death. The trustees were to have a power of sale which, for Martin's protection, they were not to exercise in his life without his consent. If a sale took place the proceeds of sale were not charged with the annuity but went over to the hospitals.

This scheme was made unworkable by the legislature in more than one particular. As from a date in 1933, twenty-one years after the testator's death, it ceased, by reason of the Thellusson Act, to be possible to accumulate the surplus income. Certain sales had taken place earlier than 1926 and the proceeds of these had been held, by Clauson, J., to be divisible forthwith among the hospitals. The learned judge also held that from the end of the accumulation period until the death of Martin, the surplus income of the unsold property devolved as on an intestacy. The policy of the Thellusson Act being generally accepted, no reasonable objection can be taken on either of these points.

But the trustees had gone on selling parts of the land, with the consent of Martin, after 1925. One would have thought that, since the accumulation period was at an end, the proceeds of these sales would likewise be immediately divisible among the hospitals. In fact, however, their destination was to the testator's heirs in gavelkind.

This perfectly extraordinary result was arrived at as follows: From the 1st January, 1926, the land was, of course, settled land under the Settled Land Act, 1925. There was equally obviously no tenant for life. Secondly, the settlement trustees became statutory owners and became entitled to a vesting deed. In fact no such vesting deed was made, but yet sales took place. By virtue of s. 13, the conveyances on sale could not operate as conveyances at all in the absence of a vesting deed, and took effect only as contracts for value to do what had been attempted. That, however, does not seem to have affected the question of the disposition of the proceeds of these sales. By s. 108 it is provided that nothing in the Act is to take away or abridge or prejudicially affect any power existing apart from the Act and exercisable by a tenant for life or by the trustees "with his consent, or on his request, or by his direction, or otherwise, and the powers given by this Act are cumulative." It is further provided by subs. (2) that in case of any conflict between the provisions of the settlement and the provisions of the Act, relative to any matter in respect of which the tenant for life or statutory owner exercises or contracts or intends to exercise any power under the Act, the provisions of the Act are to prevail. Further, it is provided that notwithstanding anything in the settlement, any power thereby conferred on the trustees is to be exercisable not by them but by the tenant for life or statutory owner. It is provided by s. 109 that additional or larger powers may be conferred by the settlement, and if so conferred shall be exercisable as if conferred by the Act.

Farwell, J., held that on its true construction s. 108 (1) preserves powers given to the trustees by the settlement where such powers can only be exercised with the consent of the tenant for life. He refused to hold that the words "or otherwise" made the subsection referable to powers requiring the consent or request of some person other than the tenant for life. Accordingly, he held that the subsection did not save the power of sale in the case, as it was one which required the consent not of a tenant for life but of an annuitant. He next dealt with s. 108 (2), and pointed out that under the settlement in question the trustees had no power to sell the estate at all save with Martin's consent, but under the Act the trustees, as statutory owners, had power to sell the estate without the consent of Martin or anybody else. He was invited to say that these two powers did not conflict and were capable of existing side by side, but refused to do so. He said that it was clear that "a power of sale in the settlement which is only a limited power, because it is restricted by conditions, is one which is inconsistent with the general power of sale which the Act confers.

The result was that the power of sale given to the statutory owners by the Act conflicted with the power of sale given to them by the settlement and therefore prevailed over it. The result was that from and after 1st January, 1926, the only power of sale was the power under the statute. That being so, the proceeds of sale were by s. 75 of the Act to be treated as capital moneys and to be subject to the trusts of the settlement. The trust for the hospitals could only arise in the lifetime of Martin if the power of sale in the settlement was exercised. As the land had been sold under the statutory power and as accumulation was impossible, the income of the proceeds of sale were undisposed of and passed to the testator's heirs in gavelkind until the death of Martin. Apart from the Settled Land Act, the testator's direction would have been carried out and this income would have gone to the hospitals. The effect of the Settled Land Act was to take it away from them and make it pass as on an intestacy.

I cannot think that this effect of the Settled Land Act was a fortunate one. A decision of this kind harks back to the numerous cases in the late 1920's regarding the overriding effect of the statutory trusts imposed by the Law of Property Act upon land held in undivided shares. As will be recollected, there were several cases in which it was held that substantial changes had been made in persons' interests in land by the imposition of those trusts. See, for example, *Re Flint* [1927] 1 Ch. 570; *Re Davies* [1932] 1 Ch. 530; *Re Thomas* [1930] 1 Ch. 194, and *Re House* [1929] 2 Ch. 166. There were also two cases of a similar sort on the Settled Land Act, namely, *Re Acklom* [1929] 1 Ch. 195 and *Re Patten* [1929] 2 Ch. 276, in which it was held that a person to whom a house was given for so long as she resided there became a person with the powers of a tenant for life, and accordingly might sell the house under the Settled Land Act and enjoy the income of the proceeds of sale although she had ceased to reside there. *Re Jefferys* therefore serves to remind us that startling and, to the layman, unreasonable results can still be induced to flow from the Settled Land Act.

Another rather technical result was arrived at in *Re Cartwright* [1939] Ch. 90. In that case the testator had been

a tenant for life under the old and new Settled Land Acts and had over a period of some years gradually realised all the freeholds comprised in his marriage settlement. There was no issue of his marriage, with the result that, subject to certain charges, he became absolutely entitled to the capital moneys representing the realised freeholds. Arrangements had been made under which sums were set aside to meet the charges and the residue was paid over to the testator. The question was, what happened to the residue of the capital moneys on his death? He was a British subject and was domiciled in England. He made his will, however, in France. This will was not validly executed according to the law of England, but was valid under French law. It read as follows: "I wish at my death to leave everything to my wife," followed by certain provisions which in the events that happened were immaterial. He died in 1936, survived by his wife. Under Lord Kingsdown's Act (the Wills Act, 1861) the will being valid according to French law was also valid in English law so as to pass personalty. It was argued that, inasmuch as the residue of the capital moneys had been paid over to the testator and the settlement had come to an end, they were personalty. Bennett, J., accepted this argument. His judgment was reversed on appeal. The Court of Appeal pointed out that since the investments in question had arisen from sales under the Settled Land Act they were affected by s. 75 (5) of that Act, which provides that capital moneys arising under the Act and the investments into which the same are put "shall for all purposes of disposition, transmission, and devolution, be treated as land." It is true that upon intestacy, realty and personalty now devolve upon identical persons under the Administration of Estates Act, 1925; it is also true that realty and personalty alike now pass to the personal representative. But there is no sort or kind of merger between them. They remain two different categories of property, each having its own rules. It is immaterial that some of those rules happen to be identical. One of the matters in which realty and personalty still differ is that wills taking effect under Lord Kingsdown's Act could only affect personalty, and capital moneys are realty, just as land held on trust for sale is personalty. The decision of the Court of Appeal, though somewhat technical, is perfectly clear and obviously right. But it is perhaps worth mentioning that *Re Cartwright* disposes of a suggestion which was recently made to me, and which has a certain plausibility, namely, that, since realty and personalty now devolve alike, the old case law upon words apt only to realty or to personalty is obsolete, with the result that words apt only to personalty could pass realty. That cannot be so; personalty and realty retain their completely separate identities.

Landlord and Tenant Notebook.

Alien Enemy Tenants.

It was a landlord's claim for rent due from an alien enemy tenant that gave rise to what became the leading authority on the status of alien enemies in the Great War, or First German War, as some now call it. *Porter* v. *Freudenburg* [1915] 1 K.B. 857 (C.A.) was an action for rent due at Michaelmas, 1914, the defendant being a German mantle manufacturer, and the premises housing a London branch establishment. It was laid down that alien enemies could be sued but could not sue, though they might defend themselves and might appeal; but these points came before the court as a question of procedure, the plaintiff having applied for directions as to serving his writ, and it was in *London and North Eastern Estates Co.* v. *Schlesinger* [1916] 1 K.B. 20 that the substantive law on the point was first gone into.

The defendant in that case, an Austrian subject, held a three years' tenancy of a flat at Westcliff-on-Sea from Lady Day, 1914. An order made under the Aliens Restriction Act, 1914, made the district a "prohibited area." The tenancy agreement provided "the tenant will occupy the said rooms only as private dwelling rooms," and forbade alienation without the landlords' consent. He was sued in the Mayor's Court for a quarter's rent, due Lady Day, 1915, and unsuccessfully contended that the order had determined his tenancy. It was then argued on his behalf, on appeal, that performance of what the contract contemplated, namely, that he would reside on the premises, had been rendered impossible, and that s. 28 of the order, which provided against aiding and abetting, also had this effect. The authorities relied on were *Krell* v. *Henry* [1903] 2 K.B. 740—one of the famous "Coronation" cases—and *Jackson* v. *Union Marine Insurance Co.* (1873), L.R. 8, C.P. 572, one of the leading cases on frustration. These arguments were rejected, it being pointed out that the defendant was entitled and not obliged to occupy; that personal residence was not the foundation of the contract, and, what is perhaps more important, that a tenancy was more than a contract.

At this stage, treating the last-mentioned remark as an *obiter dictum*, it might be said to be open to an alien enemy tenant who was obliged to reside on the premises—as is provided for by some leases, leases of farms and public-houses often being examples—to plead that, owing to the war, the foundation of the contract had gone and that without default of either party it was impossible to apply it to the circumstances with reference to which it was made.

But a few months later *Halsey* v. *Lowenfeld, Leigh Third Party* [1916] 2 K.B. 707 (C.A.), took the matter rather further. The defendant in that case, likewise an Austrian subject, was the grantee of a twenty-four year lease from Christmas, 1896. He had assigned the term in 1899 and there had been further assignments since, each assignee entering into the usual covenant to indemnify. In consolidated actions the lessors sued for three gales of rent; and the defendant issued third party notices against the last assignee and a sub-tenant. He also claimed to be entitled to a reduction which the report implies rather than says was in respect of landlord's property tax.

There was no plea of frustration, but the defence invoked the rule of the common law that all intercourse between the inhabitants of this country and alien enemies was prohibited, citing authority that not only commercial intercourse came within the ban; and contending that it was impossible to perform the obligations of the lease (including, say, the repairing covenants) without indulging in such intercourse. There is, of course, something to be said for this hypothesis, but examination of the principle on which intercourse is prohibited explodes it. In the Crimean War it was said in *Esposito* v. *Bowden* (1857), 7 E. & B. 763: "It is now fully established that the presumed object of war being as much to cripple the enemy's commerce as to capture his property, a declaration of war imports a prohibition of commercial intercourse. . . ." It would, indeed, be inconsistent with this underlying principle that a lessee should hold premises under a lease without being liable to perform the obligations of that lease, and the proclamation dealing with trading with the enemy had in fact declared in terms that payments made by alien enemies, if made unconditionally, were not prohibited, and this was held impliedly to authorise the receipt of such payments. As to the third party notice, the Judicature Act showed that third parties were defendants and in the position of defendants and the claims against them must therefore be dismissed. But the claim for a reduction was allowed on appeal.

For further authority on the meaning of "intercourse" reference may be made to the sixth article on "War and Contracts" in the series which appeared in this journal after the outbreak of the present war, entitled "Trading with the Enemy," to be found in the issue of 4th November last (Vol. 83, p. 824). Lord Dunedin reviewed the position,

summarising all the authorities, including *Porter* v. *Freudenburg*, in his speech in *Ertel Bieber & Co.* v. *Rio Tinto Co.* [1918] A.C. 260.

It is of interest to observe that both in *Porter* v. *Freudenburg* and in *Halsey* v. *Lowenfeld*, Lord Reading, C.J., pointed out that at common law an alien enemy had no rights at all and consequently no property. Concessions had been made, e.g., by Magna Carta. So, if the Crown refrained from confiscation, the alien enemy would hold his property subject to all its obligations; it was absurd that he should derive the advantage without being under the obligations incidental to his right of ownership. He was deprived of his remedies but not of his rights.

If this were the only consideration it might be pointed out that Mr. Freudenburg, while not deprived of his property, would have found it impossible to enjoy it and that the impossibility was in some measure due to the activities of the Crown. Mr. Schlesinger, too, was unable to occupy his flat by virtue of an Order in Council, and though he could have assigned or sub-let, the assignee or sub-tenant would have had to have been a neutral or to have held a licence from the Crown, while Mr. Lowenfeld had no rights against his former landlord at all. As far as the Crown's gracious waiver of its rights to confiscate is concerned, it is a case of "thank you for nothing"; indeed, confiscation would be preferred. But a tenant is more than a party to a contract, and holds an estate even if he cannot benefit by holding it.

The Trading with the Enemy Act, 1914, and the various measures which amended it have been repealed. Does the statute which replaces them, the Trading with the Enemy Act, 1939, alter the position? It is now expressly declared that a person shall be deemed to have trade with the enemy "if he has had any commercial, financial *or other* intercourse or dealings with, or for the benefit of, an enemy . . . and in particular, but without prejudice to the generality of the foregoing provisions, if he has performed any obligation to . . . an enemy," while a proviso expressly saves the right to receive payment from an enemy "due in respect of a transaction under which all obligations on the part of the person receiving payment *had been* performed before the commencement of the war . . .". (s. 1 (2)).

"Intercourse" would, there can be no doubt, receive the interpretation discussed above. The ban on the performance of obligations excuses a landlord from observing his covenants, but he could not be sued on them even if he were not so excused. But the proviso is provocative, and for this reason.

In *Halsey* v. *Lowenfeld* Lord Reading laid much stress on the corresponding provision of the Trading with the Enemy Proclamation No. 2 of 9th September, 1914, which, as his lordship observed, had been given legislative force by the Trading with the Enemy Act, 1914. Paragraph 7 of the Proclamation, cited by the learned lord chief justice, ran: "Nothing in this Proclamation shall be deemed to prohibit payments by or on account of enemies to persons resident, carrying on business or being in Our Dominions, if such payments arise out of transactions *entered into* before the outbreak of War or otherwise permitted." The proviso in the 1939 Act is narrower, as we have seen: all the obligations on the part of the person receiving payment must *have been performed* before the commencement of the war. And a landlord, though he may not be under any duty to repair or insure, is always under a covenant for quiet enjoyment. So whatever Parliament may have been thinking about—and it was probably commercial transactions only—it has certainly taken away one answer which a landlord of an enemy alien formerly had to a plea that payment of rent would be illegal.

Finally, the question of interdependent obligations is interesting. *Halsey* v. *Lowenfeld* showed that a tenant though unable to sue had a right to defend himself when sued. If, then, there should be an alien enemy tenant who is under an obligation to repair provided the landlord supplies materials, the condition of the premises is likely to be affected by the consideration whether it is a case of a qualified covenant only or whether there are two mutual covenants.

Our County Court Letter.

WRONGFUL REMOVAL OF SHED.

In a recent case at Northampton County Court (*Wilkins* v. *Baseley*) the claim was for £20 as damages for trespass. The plaintiff's case was that a shed, on the south side of some land owned by her, had been wrongfully removed by her neighbour, the defendant. The evidence in support of the plaintiff's ownership of the site of the shed was given by the managing clerk to her solicitors, who had acted on the purchase of the plaintiff's property, and by two other witnesses who knew the land. The defendant's case was that the title to the site of the shed had long been in dispute, and that the plaintiff had bought not only her property but also a lawsuit concerning its boundaries. Evidence for the defendant was given by the personal representative of his predecessor in title. His Honour Judge Hurst held that the plaintiff had made out her title, and judgment was given in her favour for £8, with costs. Compare *Rouse* v. *Gravelworks, Ltd.* [1940] W.N. 12.

TENANTS IN AUXILIARY FORCES.

In a recent case at Bristol County Court an application was made for possession of a dwelling-house, and for the payment of £24 as arrears of rent and mesne profits, at £1 a week, down to the 13th January, 1940. The premises were a controlled house, under the Rent Acts, and the defendant's case was that, ever since the 25th August, 1939, he had been in the Auxiliary Air Force. Until the 13th November the income for his wife and two children was 32s. a week, plus an extra shilling. This did not enable his wife to pay the above rent, and notice to quit had been served, but the defendant claimed the protection of the Courts (Emergency Powers) Act, 1939. His Honour Judge Wethered observed that the defendant was entitled to the protection of the Reserve and Auxiliary Forces Act, 1939, and the Reserve and Auxiliary Forces (Consequential Provisions) Order, 1939. The defendant was not entitled to protection against an order for possession under the Courts (Emergency Powers) Act, 1939, although there was a difference of opinion among county court judges on the point. As regards the claim for £24, the defendant was entitled to protection under the Courts (Emergency Powers) Act, 1939, s. 1 (1). The defendant was a member of H.M. Reserve and Auxiliary Forces within the meaning of that expression as used in the Act with that title. The landlady was therefore entitled to an order for possession, but only on terms. In June, 1939, there had been appointed a Military Service (Special Allowances) Advisory Committee, which had been empowered, since the 13th November, 1939, to make grants in special cases, up to a maximum of £2 a week, beyond the ordinary allowances paid by the Service Departments for wives and children. The grants were paid in cases of hardship due to special factors, e.g., high rent, and applications were made to regimental paymasters, in the case of men serving at home, or to the Unemployment Assistance Board, in the case of men serving abroad. On the 4th December the defendant had applied for a grant, and his wife was interviewed on the 28th December, but the result was not yet known. There was no defence to the claim for £24, and judgment for that amount was entered. No leave to proceed was given and there was no order as to costs. The order for possession would be stayed until payment by the defendant of such sum as he might receive from the committee, from the date of his application until date of payment, and thereafter the order would be stayed on payment of the current rent in accordance with the agreement with the landlady. The case was adjourned for settlement of the final order, when the amount of the grant to the defendant should become known.

To-day and Yesterday.

Legal Calendar.

5 February.—At the beginning of the nineteenth century, Mrs. Thornton, wife of Colonel Thornton, was a well-known and popular figure in the fashionable and sporting world of York. In August, 1804, when she rode a race there against a Mr. Flint a crowd of 100,000 assembled. After leading for three miles she was finally outdistanced and thence arose trouble for she had complaints against her opponent's conduct and he had a dispute with her husband over the stakes. The climax came twelve months later, on the occasion of a race which she won brilliantly against another opponent, when Flint horsewhipped the Colonel in the stand and challenged him to a duel. There was great indignation against him and the Lord Mayor ordered his arrest. On the 5th February, 1806, Colonel Thornton applied to the Court of King's Bench for leave to file a criminal information, but Lord Ellenborough refused it.

6 February.—On the 6th February, 1784, the Court of King's Bench had to consider a curious dispute between the Parish of St. Bride's and the Wardens of the Fleet Prison. The question at issue was whether the prison was liable to be assessed for poor rates. After many learned arguments on both sides which we are told lasted "for upwards of two hours" (a moderate time according to modern standards), Lord Mansfield and the other judges decided in favour of the parish.

7 February.—Lord Clare, Lord Chancellor of Ireland, who died in 1802, was abused as the basest of men and lauded as an unsullied patriot. The Dublin mob followed his funeral with curses, and on the 7th February Dr. Magee preached a sermon in his praise in Trinity Chapel. Even he was obliged to admit that Clare's character had "taken some tincture from the acrimonious politics of the times." He declared, however, that with "unwearied vigilance he detected and punished every attempt to defeat the claims of equity by the technical dexterities of fraudulent chicane," and said that "if the charities of domestic life be received as evidence of the kindly dispositions of the heart, perhaps in no case can such proof be adduced more abundant."

8 February.—When Lord Herschell became Lord Chancellor on the 8th February, 1886, he no more than fulfilled the expectations of his clerk, for once on returning to his chambers after the Long Vacation and asking what news there was, he received the reply (man identifying himself with master according to the Temple practice): "They have asked me whether we're going to take a puisne judgeship." "Well, what did you say?" asked Herschell. "I said," answered the clerk, "'Thank God we haven't fallen so low as that'."

9 February.—On the 9th February, 1802, Sir John Mitford exchanged the office of Speaker of the House of Commons for that of Lord Chancellor of Ireland.

10 February.—The treason and sedition trials in Scotland in 1793 had their motive in the not unreasonable fears inspired in the Government by the bloody excesses of the French Revolution which culminated that year in the killing of the King and afterwards of the Queen. The fate of Thomas Muir, an advocate, of Thomas Palmer, a Unitarian minister, of Margarot and of Skirving, all sentenced to transportation, excited a good deal of sympathy. On the 10th February, 1794, they were removed from Newgate together in a postchaise and four, attended by two King's Messengers, to be taken on board vessels bound for Botany Bay.

11 February.—Personal rancour underlay the court-martial of Admiral Keppel at Portsmouth in 1779 on charges arising out of his conduct during an engagement with the French fleet five months earlier. The moving spirit of the prosecution was Sir Hugh Palliser, one of Keppel's officers who had behaved during the action in a very questionable fashion, though at the time his superior, having regard to the critical condition of the service, had refrained from public complaint. On the 11th February the court declared Palliser's charges malicious and ill-founded. The London mob went mad with delight and burnt his house.

The Week's Personality.

When Sir John Mitford vacated the Speaker's chair in the House of Commons, Sir William Grant, Master of the Rolls, pronounced a speech in praise of his knowledge, varied and profound, his information, extensive and accurate, his enlightened love of the constitution and his punctilious regard to all the forms of the House and all the rules of its proceedings. After the new Chancellor, as Lord Redesdale, had gone to Ireland, he found life there very expensive. He wrote that if an Englishman "can adopt the habits of the country and be content without a thousand comforts which he has been used to in England and live in the true Irish style he may perhaps make something of an external show rather cheaper than he would do in London, but every real luxury and almost every convenience is cheaper in London and everything is infinitely better." He worked in Ireland till 1806, and on his departure the Bar thanked him for his impartiality, sagacity and patience. This must have pleased him, for he had declared in a letter to a friend: "For the office I care not, except so far as it afforded me the opportunity of discharging conscientiously an important public duty. It was unsought for by me. I came here much against my will. I came from a high situation in England where I was living amongst old friends . . . But I was told I owed it to public duty . . . so I yielded."

Relating to Children.

A notably superfluous passage in an affidavit read recently in the Chancery Division caused Mr. Justice Farwell to remark: "It seems a little unnecessary for a lady to say that she was present at the birth of her own infant. One assumes that usually. It is difficult to see how she could have been anywhere else." Oddly enough, this point is not free from authority, for no one has put the principle underlying the matter more eloquently than O'Brien, J., in the concluding passage of his judgment in *Walker* v. *Great Northern Railway Co. of Ireland*, 28 L.R. Ir. 69, at p. 83: "In law, in reason, in the common language of mankind, in the dispensations of nature, in the bond of physical union and the instinct of duty and solicitude on which the continuance of the world depends, a woman is the common carrier of her unborn child, and not a railway company." In this connection one is reminded of the lady who, when asked in a court of law how many children she had had, replied: "Four, to the best of my knowledge, information and belief." Then there was the case of the man who was being tediously cross-examined before Mr. Justice Darling. He had been asked how many children he had had, and replied two. Later on he was asked the same question again, and the judge intervened: "He told you he had two children a few moments ago. There are hardly likely to have been any fresh arrivals since."

Particularity.

Pleadings and affidavits now and then produce oddities of assertion. The Court of Appeal was once considerably amused by a paragraph in a defence signed by Edward Buller: "The defendant denies that he is the father of the said twins or of either of them." He explained that that particular gem of precision was due to an accident in his pupil-room, but the style of the master hand was clearly recognisable. The late Sir Arthur Underhill, in his memoirs, recalled how once in the Court of Vice-Chancellor Bacon a particularly solemn silk read out an affidavit which began: "I am eighty-two years of age and have had eighteen children and no more." At that point the judge interrupted the reading, exclaiming: "Give him time, Mr. Horton-Smith, give him time."

Notes of Cases.

Judicial Committee of the Privy Council.

The Apostolic Throne of St. Jacob *v.* Saba Eff Said.

Viscount Sankey, Sir Lancelot Sanderson, and Sir Philip Macdonell.

21st November, 1939.

BOND—REPAYABLE IN "FRENCH LIRAS"—INTEREST PAYMENTS MADE ON GOLD BASIS—WHETHER BOND SIMILARLY REPAYABLE.

Appeal from a decision of the Supreme Court of Palestine, sitting as a Court of Appeal.

The plaintiff, representing the estate of Yakoub Giries Said, deceased, claimed that the defendant was bound under a bond, dated the 16th August, 1916, to pay the value on the date of repayment in Palestine currency of 1,000 French gold napoleons with interest from the 21st August, 1931. The defendant admitted liability to repay the principal of the loan and interest from the 16th August, 1931, as sums of Palestinian currency, namely, £P.791·282 as principal and interest at £P.55·385 per annum. The bond was in the following terms:—

"The Apostolic Throne of St. Jacob, Jerusalem.
16th August, 1916.
No. 107. French L.1,000.

DEBT BOND.

Loaned for the needs of this Apostolic Throne, from Yakoub Giries Said . . . one thousand French Liras at an annual interest of 4% (four per cent.), . . .

SEAL (Signed) The Chief of the Holy Throne,
DAVID WARTABET DERDERIAN."

In October, 1935, the plaintiff began proceedings for recovery of the amount due to him and alleged that, as could be seen from the bond, the liability of the defendant was expressed in French liras, which expression always had and could only have the meaning of French gold napoleons. The courts in Palestine held in favour of the plaintiff and the defendant now appealed. (*Cur. adv. vult.*)

VISCOUNT SANKEY, delivering the judgment of the Board, said that *Adelaide Electric Supply Co., Ltd.* v. *Prudential Assurance Co., Ltd.* [1934] A.C. 122; 77 SOL. J. 913; *Feist* v. *Société Intercommunale Belge D'Electricité* [1934] A.C. 161; 78 SOL. J. 64, and *Ottoman Bank of Nicosia* v. *Chakarian* [1938] A.C. 260, were not in point. The bond did not stand alone. The payments of interest had been made sometimes in Egyptian liras at the tariff rate for gold coins, sometimes actually in French liras, sometimes in Egyptian piastres equivalent in amount and value to gold napoleons, sometimes in Palestine pounds with the necessary adjustment between the gold value of the Palestine pound and the Egyptian pound. Those were admissions by the defendant by which he was bound. The legal effect of admissions in Palestine was to be found in the Turkish Code (the Mejelle) which provided in Art. 79 that a person was bound by his own admission and in Art. 1588 that no person might validly retract an admission made with regard to private rights. In order to counteract the effect of those admissions the defendant contended that the interest had been paid, not on the basis of the gold rate, but on that of a tariff rate which, he alleged, had borne no relation over the course of years to the gold rate. He further alleged that the tariff rate for gold coins was not the gold exchange rate. But he made no attempt, either by the production of his books or otherwise, to displace the only inference which could be drawn from a proper consideration of the payments of interest endorsed upon the bond. Those payments indicated that the basis of the bond was compatible, and compatible only, with the loans being gold. The appeal should be dismissed.

COUNSEL: *Colin Pearson; Strangman*, K.C., and *Quass.*

SOLICITORS: *Stoneham & Sons; T. L. Wilson & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

Campbell *v.* Campbell, Lewis and Keith.

Greene, M.R., Scott and MacKinnon, L.JJ. 1st December, 1939.

DIVORCE—PRACTICE—PETITION—ANSWER ALLEGING CONDUCT CONDUCING—ASSOCIATION WITH OTHER WOMEN ALLEGED—NO ALLEGATION OF ADULTERY WITH THEM—SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT, 1925 (15 & 16 Geo. 5, c. 49)—R.S.C. Ord. XXXI, r. 19A, sub-r. 3.

Appeal from Collins, J.

The husband in his petition for divorce on the ground of adultery cited two co-respondents. The wife, who presented a cross-petition alleging adultery with a certain woman, also filed an answer admitting adultery with one of the co-respondents, but alleging that the petitioner by his conduct conduced to this adultery. In her particulars of conduct conducing she alleged: "The petitioner has consistently neglected the respondent and has been in the habit of associating with the following women in spite of the protest of the respondent." She set out particulars of the women referred to but did not charge her husband with adultery with any of them. The common form order for discovery was made against the petitioner for discovery of documents relating to the matters in question, save as to any issue of his adultery. In his affidavit he did not disclose any documents bearing on his association with any of the women mentioned in his wife's answer. She disclosed several documents in her possession bearing on that association. In the absence of any such documents from her husband's affidavit, she made an application under R.S.C. Ord. XXXI, r. 19A, sub-r. 3, for an order for discovery of certain classes of documents. The registrar made an order in relation to (1) correspondence between the husband and the women in question; (2) invoices, cheques, pass-books and the like, relating to purchases made by the husband by way of gifts to these women; (3) particular correspondence with one of the women and other documents relating to payments in connection with her. Collins, J., varied the order by limiting the affidavit which the husband was to make to such of the documents specified as were disclosed in the wife's own affidavit.

GREENE, M.R., allowing the wife's appeal, said that the existence of the association might have come to her mind by letters, or in other ways, but its existence was the relevant matter, and there was no ground for limiting the order as the judge had done. It had been argued that the registrar's order should not be restored, on the ground that such discovery would be contrary to the spirit, if not the language of s. 198 of the Supreme Court of Judicature (Consolidation) Act, 1925. It was said that though this issue was raised by way of defence and was not the issue of adultery raised in the cross-petition (which was not adultery with any of the women named in the answer), the husband was not to be ordered to disclose documents tending to show that he had committed adultery and that disclosure of these documents would tend to show that. Association with other women not amounting to adultery was not irrelevant on the point of conduct conducing. The wife's allegation on the face of it was not one of adultery, and it was not necessary that it should be so. The husband had not sworn that this discovery would tend to show that he had committed adultery. What the effect would have been if he had so sworn was irrelevant, but unless such an affidavit were sworn it would be impossible for the court to say that the production of these documents would tend to show that he was guilty of adultery. His lordship referred to *Cavendish* v. *Cavendish* [1926] P. 10, and said that the allegation not being one of adultery with these women, the court could not treat it as if it were. Further, this discovery was not oppressive.

SCOTT and MACKINNON, L.JJ., agreed.

COUNSEL: *Levy*, K.C., and *Ifor Lloyd; W. Latey.*

SOLICITORS: *L. A. Hart; Kenneth Brown, Baker, Baker.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Cooper *v.* Luxor (Eastbourne), Ltd., and Regal (Hastings), Ltd.
Scott, MacKinnon and du Parcq, L.JJ.
4th December, 1939.

PRINCIPAL AND AGENT—AGENT TO SELL PROPERTY—PROCURATION FEE ON COMPLETION—PURCHASERS FOUND—PROPERTY NOT SOLD TO THEM—LIABILITY TO AGENT.

Appeal from Branson, J.

The defendants were two private companies and the same persons were the directors of each. Each owned a freehold cinema and Regal (Hastings), Ltd., was in a position to require the transfer to itself of two leasehold cinemas. The companies wished to find a purchaser paying a price of not less than £185,000. One Ewbank, the auditor of the companies, was at first employed to find one. Subsequently the plaintiff was through him employed to do so. The directors assented to an agreement for a procuration fee of £10,000 to be paid to the plaintiff on completion of the purchase. This he had agreed to divide between himself and Ewbank in the proportions of 60 per cent. and 40 per cent. It was an implied term of the contract that the defendants would do nothing to prevent the satisfactory completion of the transaction so as to deprive the plaintiff of his fee. Through his instrumentality London & Southern Cinemas, Ltd., proved ready and willing to buy at the defendants' price. It was at first intended by the defendants that the freeholds should be transferred direct to the purchaser but that the leaseholds should be transferred to a newly-formed company, Hastings Amalgamated Cinemas, Ltd. (all the shares in which were to be allotted to Regal (Hastings), Ltd.), and that it should assign the leases to the purchaser. Of the total purchase price for all the cinemas £15,000 was to be payable to the new company. However, some of the directors of Regal (Hastings), Ltd., took steps to reduce their company's holding in this company to 2,000 of the 5,000 £1 shares in it and to divide the rest among themselves, thus obtaining a considerable advantage in the event of completion of the sale of the cinemas. In connection with this transaction considerable dissension arose between these directors and others with conflicting interests who threatened to take legal proceedings. In consequence the proposed sale was abandoned and eventually a sale of the shares in the defendant companies was effected to Union Cinemas, Ltd. The plaintiff brought an action for damages alleging that the defendants had been guilty of a breach of the implied term in their agreement with him that they would do nothing to prevent him from earning his fee. Branson, J., dismissed the action on the ground that the nature of the dissensions among the directors constituted a just excuse and reasonable cause for the defendants not proceeding with the sale of the cinemas.

SCOTT, L.J., allowing the plaintiff's appeal, referred to *George Trollope & Sons* v. *Martyn Brothers* [1934] 2 K.B. 436 and *George Trollope & Sons* v. *Caplan* [1936] 2 K.B. 382, and said that the judgment for the defendants was not warranted by those cases. The defendants had no just excuse or reasonable cause for preventing the plaintiff from earning his commission. Their breach of their contract with him was deliberate and arbitrary. Further, the improper conduct of the directors towards their own company, Regal (Hastings), Ltd., to which they owed a paramount duty to be disinterested in all their dealings in its affairs, yet further excluded the defence of a just cause. The public policy on which the privilege of limited liability given to companies, both public and private, was based was that the directors should observe the trust reposed in them by the Legislature. The unwillingness of the boards of the defendant companies to carry out the sale prevented the plaintiff from earning his commission and he was entitled by way of damages to a sum approximating to his commission. The evidence of the position at the time of the breach did not wholly exclude all risk of a breakdown in the final negotiations without blame to the defendants. His lordship referred to *Mackay* v. *Dick*, 6 App. Cas., at p. 270, and said that, though the plaintiff had performed the whole of his part, there was still the risk that London and Southern Cinemas, Ltd., might fail to complete. Making allowance for that risk it was right to fix the damages at £8,000. It had been argued that the company could not employ its auditor to find a purchaser or allow him to share the plaintiff's fee for doing so. But such work had nothing to do with his work as auditor. An honest auditor might accept such work as was offered to Ewbank.

MACKINNON and DU PARCQ, L.JJ., agreed.

COUNSEL: *C. Miller; Field*, K.C., and *Beney*.

SOLICITORS: *Mayo, Elder & Co.; H. S. Wright & Webb*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Appeals from County Courts.

Forster *v.* Llanelly Steel Co. (1907), Ltd.
Slesser, MacKinnon and Goddard, L.JJ.
18th December, 1939.

WORKMEN'S COMPENSATION — FOUNDRIES AND METAL WORKS—BREAKING DOWN LINING OF FURNACES—SILICA BRICKS—SILICOSIS CONTRACTED—WHETHER ENTITLED TO COMPENSATION—WORKMEN'S COMPENSATION ACT, 1925 (15 & 16 Geo. 5, c. 84), s. 47—VARIOUS INDUSTRIES (SILICOSIS) SCHEME, 1931 (S.R. & O., 1931, No. 342), para. 2 (viii) (*a*).

Appeal from Llanelly County Court.

The workman was employed in the foundries and metal works of the company. The furnaces were built with silica bricks and lined with silica cement. The bricks and cement contained not less than 80 per cent. total silica. They had to be renewed at intervals. The man was employed to break down old brick layers inside the furnaces and build up new ones. Crowbars and hammers were used for this purpose. Many of the new bricks had to be shaped by chipping. The whole process involved the creation of a considerable amount of silica dust. In 1939 the man was certified as being totally disabled by reason of silicosis. In a claim by him under the Workmen's Compensation Act, 1925, the county court judge awarded him compensation, holding (1) that his condition arose out of his employment, and (2) that his work came within the description "crushing or grinding of bricks or other articles containing not less than 80 per cent. total silica" in para. 2 (viii) (*a*) of the Various Industries (Silicosis) Scheme, 1931, made under s. 47 of the Act.

SLESSER, L.J., allowing the company's appeal, said that the man could only bring himself within the Scheme if he was within para. 2 (viii) (*a*). It was argued that he was neither crushing nor grinding bricks but only breaking them. The Scheme dealing with several processes in which silica dust might arise must be regarded as a whole. It pointed to the processes of breaking, crushing and grinding being separate and distinct. The judge had held that what the man did was satisfied by the term "crushing." That conclusion was wrong.

MACKINNON and GODDARD, L.JJ., agreed.

COUNSEL: *Sellers*, K.C., and *H. E. Davies; Paul*, K.C., and *T. J. Jones*.

SOLICITORS: *Kenneth Brown, Baker, Baker; W. H. Thompson*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Gasson and Hallagan, Ltd. *v.* Jell.
Farwell, J. 12th January, 1940.

EMERGENCY LEGISLATION—ACTION BY MORTGAGEE FOR ACCOUNT AND APPOINTMENT OF RECEIVER—MOTION FOR APPOINTMENT OF RECEIVER—LEAVE OF COURT TO PROCEED NOT OBTAINED—COURTS (EMERGENCY POWERS) ACT, 1939 (2 & 3 Geo. 6, c. 67), s. 1 (2) (*b*).

By a legal charge dated the 28th April, 1939, the defendant covenanted to pay to plaintiffs on the 5th July, 1939, the

principal sum of £4,630 6s. 5d. with interest, and, if the said sum was not so paid, to pay interest thereon quarterly, and the defendant thereby charged certain freehold premises with payment of the moneys thereby covenanted to be paid. The power of sale was to be exercisable if any interest should be in arrear for twenty-one days. The defendant failed to pay the interest payable on the 5th October, 1939. On the 29th November, 1939, the plaintiff took out an originating summons, asking (1) that an account might be taken of what was due to the plaintiffs; (2) that the defendant might be ordered to pay the sum found due; and (3) that a receiver of the property comprised in the charge might be appointed. On the 30th November, 1939, the plaintiffs gave notice of motion asking for the appointment of a receiver. The defendant took the preliminary objection that, having regard to the fact that the claim in the originating summons had no relation to the mortgaged property, being a claim for an account and an order to pay, the relief ought not to be extended by appointing a receiver.

FARWELL, J., dismissing the application, said the reason why the plaintiffs had started proceedings in this form was obviously for the purpose of avoiding the provisions of the Courts (Emergency Powers) Act, 1939, s. 1 (2) (*b*). Directly the plaintiffs sought the ordinary remedy of a mortgagee, namely, foreclosure or sale, they would have to obtain the leave of the court to institute such proceedings. The court ought not to countenance a device which would enable the plaintiffs to get the advantage of the appointment of a receiver, where they made no claim against the property itself, but merely made a personal claim against the defendant, which did not require leave under the Courts (Emergency Powers) Act, 1939. On an application by the plaintiffs for leave to amend the summons by adding a claim for foreclosure or sale, his lordship granted leave to take out a summons under the Act for leave to amend.

COUNSEL: *Cozens-Hardy Horne; J. Bowyer.*

SOLICITORS: *Kingsford, Dorman & Co.*, for *Henry G. Baily & Strickland*, of St. Leonards; *Langford, Barrowdale and Thain.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re **Zakon**; *ex parte* **The Trustee and Bushell.**

Farwell, J. 15th January, 1940.

BANKRUPTCY—DEBTOR EXECUTES DEED OF ARRANGEMENT—CREDITORS FAIL TO ASSENT TO DEED—VOID—DEBTOR ADJUDICATED BANKRUPT—TRUSTEE OF DEED CLAIMS REMUNERATION—DISCRETION OF COURT—DEEDS OF ARRANGEMENT ACT, 1914 (4 & 5 Geo. 5, c. 47), ss. 2, 3, 21.

Motion in bankruptcy.

On the 12th November, 1938, the bankrupt executed an assignment of his property to the respondent for the benefit of his creditors. The respondent, on the 17th November, procured the deed to be registered. On the 18th November a meeting of creditors was held. A majority of the creditors in number and value did not at this meeting or subsequently assent to the deed, which, therefore, became void under s. 3 of the Deeds of Arrangement Act, 1914. On the 24th November a bankruptcy petition was presented, a receiving order was made on the 5th January, 1939, and on the 1st February the bankrupt was adjudicated bankrupt. On the 25th January the applicant was appointed trustee of the bankrupt's property. The respondent, as trustee of the deed of arrangement, carried on the bankrupt's business for a few weeks, and got in book debts amounting to £1,067 13s. 10d. The respondent handed over to the applicant, as trustee in the bankruptcy, all the moneys he had collected, less the sum of £121 5s. 10d. The respondent claimed to retain this sum, as to £4 14s. 10d. as costs of registration of the deed, as to £80 and £26 11s. as commission for his services, and as to £10 by way of allowance paid to the debtor. By this motion the trustee in bankruptcy asked for an order for the payment to him of the sum of £121 15s. 10d. The Deeds of Arrangement Act, 1914, s. 2, provides: "A deed of arrangement shall be void unless it is registered with the Registrar of Bills of Sale under this Act within seven clear days after the first execution thereof by the debtor or any creditor. . . ."

FARWELL, J., said the words "by the debtor or any creditor" in s. 2 of the Act refer to the execution of the deed and not to its registration. There is nothing in the section which imposes on the trustee or upon a debtor the duty of registering the deed. In the present case, at the expiration of twenty-one days from the date of registration, the deed of arrangement became void. There was nothing in s. 21 or elsewhere in the Act which authorised the payment of the trustee's expenses in a case like this. Nor did the Act permit the trustee in bankruptcy to make any allowance. If any allowance was to be made it could only be by the court. In the present case, the respondent registered the deed, collected debts and carried on the bankrupt's business, when he did not know if the deed would become effective or not. He had acted at his own risk. There might be cases where so obvious a benefit had resulted from the acts of the trustee that it would be unfair to allow the creditors to receive the benefit without making some payment. The court would only permit such payment, when it was satisfied beyond reasonable doubt that the trustee's exertions had resulted in a real benefit. In the present case his lordship was not satisfied that the respondent's action in collecting the book debts and managing the business had been of any real benefit to the general body of creditors. His lordship accordingly ordered the respondent to pay the sum of £121 5s. 10d. to the applicant and to pay the costs of the motion.

COUNSEL: *Leonard Lewis; A. S. Orr* (for *J. M. Buckley*, on war service).

SOLICITORS: *Zeffertt, Heard & Morley Lawson; McKenna and Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

High Court—King's Bench Division.

Ayres *v.* **Moore.**

Hallett, J. 16th November, 1939.

BILLS OF EXCHANGE—ACCEPTANCE GIVEN UNDER MISTAKE OF FACT—MISTAKE AS TO DESIRABILITY OF GIVING ACCEPTANCE—NO LIABILITY TO ACCEPT BILL—MISTAKE NOT A GOOD DEFENCE—ACCEPTANCE OBTAINED BY FRAUD—PLAINTIFF NOT A HOLDER IN DUE COURSE—FRAUD A VALID DEFENCE.

Action on bills of exchange.

The defendant, Moore, accepted five bills of exchange for £500 each, dated the 21st March, 1938, and payable to the order of the plaintiff at different periods after date. The bills were accepted by the defendant in the following circumstances. One, Fisher, owed the plaintiff £3,780. Wishing to furnish himself with security for that debt, Fisher induced the defendant to accept the bills, representing to him that they were required to finance the purchase of certain patents by a limited company of which the defendant was chairman and a director, and Fisher the secretary. No part of Fisher's debt to the plaintiff, with the possible exception of £250, of which there was no evidence, related in any way to the business of the company. The bills of exchange having in due course been dishonoured on presentation, the plaintiff brought this action. It was conceded on behalf of the plaintiff that he was not a holder in due course of the bills inasmuch as (*a*) he was the original payee, and (*b*) the bills were incomplete through not containing the name of the plaintiff as drawer.

HALLETT, J., said that the defendant first contended, by way of avoiding his *prima facie* liability, that there was no consideration for the bills. The plaintiff pleaded that the consideration for the bills was his forbearing to press Fisher for repayment during the currency of the bills. There was no evidence of any express agreement between Fisher and the

plaintiff to the effect thus pleaded. In his (his lordship's) opinion there was good consideration for the bills. By s. 27 of the Bills of Exchange Act, 1882, valuable consideration for a bill might be constituted by (*a*) any consideration sufficient to support a simple contract, or (*b*) an antecedent debt or liability. Here the bills operated as a conditional payment of the antecedent debt which undoubtedly existed. The defendant next argued that he accepted the bills under a mistake of fact, thinking that they were required in connection with the company in which he was interested. The authorities cited on this point all related to claims for money had and received based on an allegation that the money had been paid under a mistake of fact. *Aiken* v. *Short* (1856), 1 H. & N. 210, laid down that the mistake must be as to a fact which, if true, would make the person who had paid the money liable to pay it. That seemed to be in accord with *Kelly* v. *Solari* (1841), 9 M. & W. 54, and had been treated in *In re The Bodega Co., Ltd.* [1904] 1 Ch. 276, at p. 286, as still being good law. The matter was placed beyond doubt by *Morgan* v. *Ashcroft* [1938] 1 K.B. 49, although Scott, L.J., while recognising the soundness of the principle laid down in *Aiken* v. *Short* (*supra*), pointed out that the language used there was not perhaps quite wide enough to cover all the cases where a mistake of fact would give rise to a right of recovery. In the present case the fact as to which the defendant was mistaken was not one affecting his liability within the meaning of the earlier cases, nor a fundamental fact in the sense meant by Scott, L.J., in *Morgan* v. *Ashcroft* (*supra*). There was no doubt that the defendant was under no liability, legal or moral, to provide for repayment of the plaintiff's indebtedness, although he had reasons for thinking it in his interest to do so. This was not an action by a person who had paid money under a mistake of fact. It was a defendant who was seeking to avoid having to pay money as the result of a contract alleged to have been entered into under a mistake of fact. Although there were obvious distinctions between the two kinds of action, he (his lordship) was of opinion that in maintaining such a defence it was at least as necessary for the defendant as for a plaintiff in an action for money paid under a mistake of fact to show that the mistake was as to a fact affecting liability, or at any rate, as to a fundamental fact in the sense of that term as used by Scott, L.J., in *Morgan* v. *Ashcroft* (*supra*). It was next argued that the defendant was relieved of liability because his acceptance of the bills was obtained by Fisher's fraud. That argument was right. The plaintiff had not, as had been conceded, the advantage of being a holder in due course. Neither was there any ground on which he could rely on an estoppel, which in any event had not been pleaded with particularity. He was therefore not protected in respect of fraud. The plaintiff, however, contended that the fact that the defendant's acceptance of the bills was provided by the fraud of a third party was not sufficient to entitle the defendant to escape his liability *vis-a-vis* the plaintiff, the plaintiff not having been shown to be actually or notionally guilty of complicity in the fraud. In his (his lordship's) opinion, it was precisely because the holder of a bill might be affected by a fraud although personally innocent of it that the statutory provisions for the protection of a holder in due course existed. Although no very clear authority had been cited on the point, he (his lordship) was of the opinion that that protection did not extend to an immediate party to a bill. That third defence having succeeded there must be judgment for the defendant.

COUNSEL: *P. L. E. Rawlins*, for the plaintiff; *Macaskie*, K.C., and *B. L. A. O'Malley*, for the defendant.

SOLICITORS: *Wilberforce Allen & Bryant*, for *F. S. Collinge & Co.*, Colchester; *Gibson & Weldon*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Attorney-General *v.* Hancock.

Wrottesley, J. 19th December, 1939.

EMERGENCY LEGISLATION—COURTS EMERGENCY POWERS—JUDGMENT FOR SUM DUE AS INCOME TAX—RIGHT OF CROWN TO ENFORCE WITHOUT OBTAINING LEAVE OF THE COURT—COURTS (EMERGENCY POWERS) ACT, 1939 (2 & 3 Geo. 6, c. 67), s. 1.

Agreed special case stated.

In July, 1938, the informant, the Attorney-General, by a writ of subpœna claimed from the defendant, Hancock, arrears of income tax for the years ending the 5th April, 1937 and 1938, charged on him under Sched. D to the Income Tax Act, 1918. The defendant entered an appearance to the writ, but did not plead to the information which was filed in November, 1938. Judgment was accordingly signed against him for the amount due, with costs. No part of the sums due having been paid, the Attorney-General proposed to enforce the judgment by execution or otherwise, but the defendant contended that that course could not be taken without leave of the court under s. 1 of the Courts (Emergency Powers) Act, 1939. The Attorney-General contended that the Act did not apply to proceedings instituted on behalf of the Crown. By s. 1 of the Act: "(1) . . . a person shall not be entitled, except with the leave of the appropriate Court, to proceed to execution on, or otherwise to the enforcement of, any judgment or order of any Court . . . for the payment or recovery of a sum of money . . ." It was argued for the Crown that the Act of 1939 did not bind it; that other Acts not affecting the Crown were the Debtors Act, 1869 (*Attorney-General* v. *Edmunds; In re Smith*, 2 Ex. D. 47), the Rent Restriction Acts (*Wirral Estates, Ltd.* v. *Shaw* [1934] 2 K.B. 247); that the Companies Act, 1929, affected the Crown because it contained provisions to that effect. It was further argued that the rule as stated by Rowlatt, J., in *Attorney-General for the Duchy of Lancaster* v. *Moresby* [1919] W.N. 69, that a statute did not bind the Crown which was for the suppression of a wrong, was too vague, and that in any case the decision was distinguishable because of the difference between the Act of 1917 there in question and the Act of 1939. It was argued for the defendant that the Act of 1939 was one for the prevention of hardship and intended to prevent consequences which would work with injustice on the public if matters were left to the rights of the parties, and that it came within the rule propounded by Rowlatt, J.; that the decision in *Master and Fellows of Magdalen College, Cambridge*, 11 Coke's Rep., 66*b*, that the statute there in question bound the Crown because for the benefit of religion, had never been criticised; that there was no authority to challenge the general principle that, where legislation was passed for the avoidance of injury and wrong, the Crown was bound by it; and that the whole object of the Act of 1939 was to prevent such enforcement of certain obligations as might, in view of the present times, lead to individual hardship. It was further contended that the income tax laws provided, *inter alia*, a complete code for the enforcement of obligations and for the mitigation of fines and penalties, and that therefore the Crown's prerogative could not be involved.

WROTTESLEY, J., giving judgment, referred to "Maxwell on the Interpretation of Statutes," 8th ed., at p. 120, and said that the true rule was not that the Crown merely legislated for its subjects, because it often did so for itself as well as its subjects; but that, when the legislation was such as would *prima facie* affect the Crown's rights, then it was not binding on the Crown unless the Crown were specially mentioned, or it were shown, either by necessary implication or by express language, that it was meant to be so affected. Looking at all the decisions and applying the analogy of the other Acts which, though beneficial to the public, had been held not to bind the Crown, it was clear that if the Act of 1939 were applied to the Crown it would operate to deprive it

of its prerogatives, estates, rights, titles and interests; and there being in the Act of 1939 no special words mentioning the Crown and no words which involved the Crown by necessary implication, he (his lordship) held that the Act did not bind the Crown. He would, therefore, declare that the informant might proceed to execution of, or otherwise enforce, his judgment against the defendant, without obtaining the permission of any court. It having been stated that the Crown had agreed to pay the defendant's costs, the only order made with reference to costs was that they should be taxed as between the defendant and his solicitors.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.), *R. P. Hills* and *Valentine Holmes*, for the Crown; *Murphy*, K.C., and *J. H. Bowe*, for the defendant.

SOLICITORS: *The Solicitor of Inland Revenue; James Turner & Son & Whitehouse.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Reviews.

The Courts (Emergency Powers) Act, 1939, *as amended by the Possession of Mortgaged Land (Emergency Provisions) Act*, 1939. By the Editors of "Law Notes." Second Edition. 1939. pp. vii and (with Index) 78. London: The "Law Notes" Publishing Offices. Price 3s. net.

This is modestly described as a pamphlet in the preface to the first edition, but, as a second (the present) edition was called for in the following month, it may be assumed that the publication will shortly rank as a text-book. The two Acts dealt with are short, but proceedings thereunder are occupying the attention of the courts to an increasing extent. The Emergency Powers Rules, both for the High Court and County Court, are included, and the annotations contain full cross-references, and also discussions of the relevant cases decided under similar conditions in the last war.

Books Received.

War Time Lawyer. By LEWIS SILKIN, M.P., Solicitor of the Supreme Court, and S. C. SILKIN, B.A. (Cantab.), of the Middle Temple. pp. 120 (with Index). London: *Daily Express* Books Department. Price 1s. net.

Supplement No. 1, Emergency Legislation to December, 1939, *to the 24th Edition of Woodfall's Law of Landlord and Tenant*. By LIONEL A. BLUNDELL, LL.M., of Gray's Inn, Barrister-at-Law. pp. (with Index) 80. London: Sweet and Maxwell, Ltd.; Stevens & Sons, Ltd. Price 5s. net.

A Dictionary of Legal Terms, Statutory Definitions and Citations. By H. A. C. STURGESS, Librarian and Keeper of the Records, Middle Temple, and ARTHUR R. HEWITT, Assistant Librarian, Middle Temple. Second Edition. 1940. Demy 8vo. pp. vi and 349. London: Sir Isaac Pitman & Sons, Ltd. Price 7s. 6d. net.

Quarter Sessions Practice. By A. C. C. WILLWAY, of the Inner Temple, Barrister-at-Law, Deputy Clerk of the Peace for the County of Surrey. 1940. Demy 8vo. pp. xxvii and (with Index) 388. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. Price 21s. net.

The Prevention of Fraud (Investments) Act, 1939. By L. J. MORRIS SMITH, B.A., LL.B., B.C.L., of Gray's Inn, Barrister-at-Law. 1940. Demy 8vo. pp. vii and (with Index) 171. London: Jordan & Sons, Ltd. Price 10s. 6d. net.

The 107th Annual General Meeting of the National Provincial Bank, Ltd., was held on the 30th January. In submitting the statement of accounts, the Chairman said that their chief liability, current, deposit and other accounts, at £336,000,000, was £26,000,000 in excess of the balance sheet figure of a year ago, and was a record in the history of the bank. The net profit for the year was £1,718,983, a reduction of some £50,000. The dividend was continued at 15 per cent.

Obituary.

SIR FRANCIS BLAKE.

Sir Francis Blake, Bart., died on Monday, 5th February, at the age of eighty-three. He was educated at Cheltenham and University College, Oxford. In 1881 he was called to the Bar by the Inner Temple and joined the North Eastern Circuit. He was Coalition Liberal M.P. for Berwick-on-Tweed from 1916 to 1922. He also took a prominent part in county affairs as Chairman of the Northumberland County Council and Chairman of the Quarter Sessions. In 1920 and 1931 he was Vice-Lieutenant of the County. In recognition of his services he was given a baronetcy in 1907 and made a C.B. in 1919.

MR. M. SHEARMAN.

Mr. Montague Shearman, Assistant Legal Adviser at the Foreign Office, died on Sunday, 4th February, at the age of fifty-four. He was a son of the late Sir Montague and Lady Shearman, and was educated at Westminster and Balliol College, Oxford. He was called to the Bar by the Inner Temple in 1908. During the last war he joined the Foreign Office, and for his work there on the Contraband Committee he received the O.B.E. He took a great interest in social and political work in Bermondsey, and sat on the L.C.C. as a Progressive member for that constituency.

MR. E. S. LLOYD.

Mr. Edward Stanley Lloyd, solicitor, of Ludlow, died on Monday, 29th January, at the age of seventy-two. Mr. Lloyd was admitted a solicitor in 1890.

MR. E. J. STANNARD.

Mr. Edward John Stannard, solicitor, of Messrs. Stannard, Bosanquet & Michaelson, solicitors, of 19, Eastcheap, London, E.C.3, died on Tuesday, 6th February. Mr. Stannard was admitted a solicitor in 1885, and had been Past Master of the Blacksmiths' Company and the City of London Solicitors' Company.

MR. C. STEVENS.

Mr. Courtenay Stevens, solicitor, of Messrs. Petch & Co., solicitors, Bedford Row, London, W.C.1, died on Sunday, 4th February, at the age of sixty-six. Mr. Stevens was admitted a solicitor in 1900.

MR. S. S. WATERHOUSE.

Mr. Samuel Sharpe Waterhouse, solicitor and senior partner in the firm of Messrs. Waterhouse, Tillotson & Ellis, solicitors, of Blackpool, died on Tuesday, 30th January, at the age of seventy-four. Mr. Waterhouse was admitted a solicitor in 1892, and had been a magistrate for thirty-four years. He had also been president of the Blackpool Law Society on two occasions, as well as secretary for a considerable time. At the time of his death he was hon. treasurer.

Societies.

General Council of the Bar.

The Council has re-appointed the following officers:—Chairman, Sir Herbert Cunliffe, K.C.; Vice-Chairman, Mr. R. E. L. Vaughan Williams, K.C.; Hon. Treasurer, Mr. A. T. Miller, K.C. The following members of the Bar have been declared elected to fill the twenty-four vacancies on the Council:—Mr. R. E. L. Vaughan Williams, K.C., Mr. J. M. Gover, K.C., Mr. Charles Doughty, K.C., Mr. W. P. Spens, O.B.E., K.C., M.P., Mr. Lionel L. Cohen, K.C., Mr. W. C. Cleveland-Stevens, K.C., Mr. G. Justin Lynskey, K.C., Mr. Arthur Morley, O.B.E., K.C., Mr. C. Paley Scott, K.C., Mr. D. P. Maxwell Fyfe, K.C., M.P., Mr. H. St. John Field, K.C., Mr. Wilfrid M. Hunt, Mr. Cecil W. Turner, Mr. J. H. Stamp, Mr. W. D. Mathias, Mr. R. A. Willes, Mr. George F. Kingham, Mr. J. Lhind Pratt, Mr. W. A. Macfarlane, Mr. J. Reginald Jones, Mr. Gerald Thesiger, Miss H. M. Cross, Mr. E. S. Lycett Green, Mr. Geoffrey de Freitas. The following members

of the Bar have been appointed additional members of the Council :—Mr. R F. Bayford, O.B.E., K.C., Mr. St. John G. Micklethwait, K.C., Mr. Noel B. Goldie, K.C., M.P., Mr. Trevor Watson, K.C., Mr. J. H. Thorpe, O.B.E., K.C., and Mr. W. Wallach.

Law Association.

The usual monthly meeting of the Directors was held on the 5th February, Mr. Ernest Goddard in the chair. The other Directors present were Mr. E. Evelyn Barron, Mr. Guy H. Cholmeley, Mr. C. D. Medley, Mr. John Venning, Mr. William Winterbotham, and the Secretary, Mr. Andrew H. Morton. The Secretary reported the result of the annual appeal to be two new life members, and seven annual subscribers : £91 10s. was voted in relief of deserving applicants, and other general business transacted.

Rules and Orders.

1940 No. 137 /L.1.

SUPREME COURT, ENGLAND, SITTINGS.

THE CIVIL BUSINESS (AUTUMN CIRCUIT) (No. 1) ORDER, 1940. DATED JANUARY 18, 1940.

I, the Right Honourable Gordon Lord Hewart, Lord Chief Justice of England, in exercise of the powers vested in me by the Circuit Orders in Council, 1912 and 1919,* and all other powers enabling me in this behalf, and with the sanction of the Lord Chancellor, do hereby order and direct as follows :—

1. Civil Business generally shall be taken on the Autumn Circuit until further order at Chelmsford in addition to the Assize towns at which Civil Business is now directed to be taken.

2. This Order may be cited as the Civil Business (Autumn Circuit) (No. 1) Order, 1940.

Dated the 18th day of January, 1940.

Hewart, C.J.
Caldecote, C.

* S.R. & O. 1912 (No. 537) p. 1186; 1919 (No. 1287) II, p. 470.

War Legislation.

(Supplementary List, in alphabetical order, to those published week by week, in THE SOLICITORS' JOURNAL, *from the 16th September, 1939, to the 3rd February, 1940, inclusive.)*

Progress of Bills.

House of Lords.

Mental Deficiency (Scotland) Bill [H.L.].
Read Second Time. [6th February.

Trade Boards and Road Haulage Wages (Emergency Provisions) Bill [H.C.].
Read First Time. [7th February.

House of Commons.

Agriculture (Miscellaneous War Provisions) Bill [H.C.].
Read Second Time. [6th February.

Industrial Assurance and Friendly Societies (Emergency Protection from Forfeiture) Bill [H.C.].
Read Second Time. [31st January.

Old Age and Widows' Pensions Bill [H.C.].
Read First Time. [24th January.

Rating and Valuation (Postponement of Valuation) Bill [H.C.].
Read First Time. [7th February.

Societies (Miscellaneous Provisions) Bill [H.C.].
Read First Time. [1st February.

Statutory Rules and Orders.

No. 128. **Animal.** Diseases of Animals. The Exportation and Transit of Horses, Asses and Mules (Amendment) Order, dated January 25.

No. 129 /S.1. **Agricultural Marketing, Scotland.** The Aberdeen and District Milk Marketing Scheme (Amendment) Order, dated January 16.

No. 107. **Compensation (Defence).** The Interest on Compensation (Defence) Order, dated January 29.

No. 162. **Emergency Powers (Defence).** Order, dated February 3, amending the Animal Oils and Fats (Provisional Control (No. 2) Order, 1939.

No. 163. Emergency Powers (Defence). The Animal Oils and Fats (Provisional Control) Amendment (No. 2) Order, dated February 3.

No. 165. Emergency Powers (Defence). Order, dated February 2, amending the Bacon (Prices) Order, 1940.

No. 101. Emergency Powers (Defence). Built-up Areas Order, dated January 27.

No. 134. Emergency Powers (Defence). Order, dated January 30, amending the Butter (Maximum Prices) Order, 1940.

No. 24. Emergency Powers (Defence). The Fuel and Lighting Order, dated January 25.

No. 127. Emergency Powers (Defence). The Control of Iron and Steel (No. 6) Order, dated January 29.

No. 132. Emergency Powers (Defence). The Lighting (Restrictions) (Northern Ireland) Order, dated January 29.

No. 150. Emergency Powers (Defence). The Milk (Retail Maximum Prices) Order, dated January 31.

No. 126. Emergency Powers (Defence). The Control of Molasses and Industrial Alcohol (No. 2) Order, 1939, Direction No. 2, dated January 26.

Nos. 117 & 145. Emergency Powers (Defence). The Home-Grown Oats (Control and Maximum Prices), and (Northern Ireland), Orders, dated January 27 and 31.

No. 118. Emergency Powers (Defence). General Licence, dated January 27, under the Home-Grown Oats (Control and Maximum Prices) Order, 1940.

No. 141. Emergency Powers (Defence). The Restriction of Construction of Ships Order, 1939 (Revocation) Order, dated January 31.

No. 143. Emergency Powers (Defence). The Restriction of Construction of Ships Order, dated January 31.

No. 140. Emergency Powers (Defence). The Restriction of Repairs of Ships Order, 1939 (Revocation) Order, dated January 31.

No. 142. Emergency Powers (Defence). The Restriction of Repairs of Ships Order, dated January 31.

No. 131. Emergency Powers (Defence). The Tea (Provisional Prices) (Revocation) Order, dated January 29.

No. 138. Emergency Powers (Defence). Unlicensed Vehicles, Northern Ireland. Directions, dated January 27.

No. 139. **Factories.** The Young Persons under Sixteen (Factory Hours Modification) Regulations, dated January 27.

No. 133. **Local Government, England.** The London Government (Form of Mortgages and Transfers) Regulations, dated January 23.

No. 1847. **National Health Insurance (Approved Societies) Regulations,** dated December 13, 1939.

No. 99. **Safeguarding of Industries** (Exemption) No. 1 Order, dated January 24. (Aniline.)

No. 100. Safeguarding of Industries (Exemption) No. 2 Order, dated January 24. (Certain Metallic Residues.)

No. 116. Safeguarding of Industries (Exemption) No. 3 Order, dated January 26. (Acid Phthalic Anhydride. Phthalic Anhydride.)

No. 137 /L.1. **Supreme Court, England.** Sittings. The Civil Business (Autumn Circuit) (No. 1) Order, dated January 18.

No. 136. **Trading with the Enemy** (Specified Persons) (Amendment) (No. 1) Order, dated January 30.

No. 1946. **Unemployment Assistance** (Determination of Need and Assessment of Needs) (Amendment) Regulations, dated December 18, 1939.

No. 1944. **Unemployment Insurance (Emergency Powers) (Amendment) Regulations,** dated December 20, 1939.

Non-Parliamentary Publications.

STATIONERY OFFICE.

List of Emergency Acts and Statutory Rules and Orders issued during January, 1940. (Includes Supplements Nos. 6–8 of list dated November 14, 1939).

Copies of the above Bills, S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

Legal Notes and News.

Honours and Appointments.

The King has approved a recommendation of the Home Secretary that Mr. JOHN F. EASTWOOD, K.C., M.P., be appointed a Metropolitan Police Magistrate to fill the vacancy caused by the retirement of Sir Rollo Graham-Campbell. He was sworn in before the Lord Chief Justice on Monday last. Mr. Eastwood was called to the Bar by the Inner Temple in 1911 He is also a member of the Middle Temple The appointment necessitates a by-election in the Kettering Division, which Mr. Eastwood has represented in the Unionist interest since 1931.

The King has also been pleased to approve the appointment of Mr. CHARU CHANDRA BISWAS to be a Puisne Judge of the High Court of Judicature in Calcutta in the vacancy caused by the retirement of Mr. Justice M. C. Ghosh.

The Colonial Office announce that the King has approved the appointment of Mr. J. H. JARRETT, Colonial Secretary, Bahamas, to be Chief Justice of the Windward Islands and Leeward Islands under the scheme for the amalgamation of the judicatures of those islands which has recently been brought into effect.

The Colonial Legal Service announce the following recent appointments and promotions :—

Mr. W. M. MCCALL to be Crown Counsel, Straits Settlements ; Mr. J. REYNOLDS to be Crown Counsel, Hong Kong.

Mr. J. BENNETT, late Assistant Administrator-General, Zanzibar, to be Registrar-General and Registrar of the Supreme Court, Fiji ; Mr. J. L. DEVAUX, Attorney-General, Trinidad to be Chief Judge, Mauritius ; Mr. L. I. N. LLOYD-BLOOD, Attorney-General, Cyprus, to be Puisne Judge, Tanganyika Territory ; Mr. G. T. LOWRY, Police Magistrate, Nigeria, to be Magistrate, Hong Kong ; Mr. G. G. PAUL, Puisne Judge, Nigeria, to be Chief Justice, Sierra Leone ; Mr. J. VERITY, Puisne Judge, British Guiana, to be Chief Justice, Zanzibar.

Notes.

Mr. W. H. S. Oulton, London Magistrate, sat at Tower Bridge Police Court for the last time on Wednesday, 31st January. He has been connected with police courts for forty-seven years. He was called to the Bar by the Inner Temple in 1893, and practised on the Northern Circuit. Later he acted as Assistant and Deputy Assistant Recorder and as Deputy Stipendiary Magistrate in Liverpool. In 1925 he was appointed Metropolitan Magistrate and sat at Greenwich and Woolwich Courts until, in 1927, he was transferred to Lambeth. The following year he became senior Magistrate at Tower Bridge. Tributes to Mr. Oulton were paid by solicitors and police officers at Tower Bridge Police Court.

Wills and Bequests.

Mr. Henry Stuart Salter, solicitor, of Walton-on-Thames, left £16,207, with net personalty £14,003.

Mr. William Weeks Szlumper, Barrister-at-Law, of Churt, left £11,998, with net personalty £9,199.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT. No. 1.	MR. JUSTICE FARWELL.
	Mr.	Mr.	Mr.
Feb. 12	Jones	Ritchie	Reader
,, 13	Ritchie	Blaker	Andrews
,, 14	Blaker	More	Jones
,, 15	More	Reader	Ritchie
,, 16	Reader	Andrews	Blaker
,, 17	Andrews	Jones	More

	GROUP A.		GROUP B.	
DATE.	MR. JUSTICE BENNETT. Witness.	MR. JUSTICE SIMONDS. Non-Witness.	MR. JUSTICE CROSSMAN. Witness.	MR. JUSTICE MORTON. Non-Witness.
	Mr.	Mr.	Mr.	Mr.
Feb. 12	Jones	Blaker	More	Andrews
,, 13	Ritchie	More	Reader	Jones
,, 14	Blaker	Reader	Andrews	Ritchie
,, 15	More	Andrews	Jones	Blaker
,, 16	Reader	Jones	Ritchie	More
,, 17	Andrews	Ritchie	Blaker	Reader

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October 1939) 2%. Next London Stock Exchange Settlement, Thursday, 22nd February, 1940.

	Div. Months.	Middle Price 7 Feb. 1940.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	108	3 14 1	3 7 6
Consols 2½%	JAJO	73½	3 8 0	—
War Loan 3½% 1952 or after	JD	98½	3 11 1	—
Funding 4% Loan 1960–90	MN	111¼	3 11 11	3 4 6
Funding 3% Loan 1959–69	AO	97½	3 1 6	3 2 8
Funding 2¾% Loan 1952–57	JD	96	2 17 4	3 1 2
Funding 2½% Loan 1956–61	AO	90	2 15 7	3 3 2
Victory 4% Loan Av. life 21 years	MS	110½	3 12 5	3 5 11
Conversion 5% Loan 1944–64	MN	110⅝	4 10 7	1 16 9
Conversion 3½% Loan 1961 or after	AO	99½	3 10 4	—
Conversion 3% Loan 1948–53	MS	100½	2 19 8	2 18 7
Conversion 2½% Loan 1944 49	AO	99¼	2 10 4	2 11 10
National Defence Loan 3% 1954–58	JJ	100	3 0 0	3 0 0
Local Loans 3% Stock 1912 or after	JAJO	85½	3 10 2	—
Bank Stock	AO	338	3 11 0	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	81½	3 7 6	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	86½	3 9 4	—
India 4½% 1950–55	MN	110	4 1 10	3 6 1
India 3½% 1931 or after	JAJO	90½	3 17 4	—
India 3% 1948 or after	JAJO	77½	3 17 5	—
Sudan 4½% 1939–73 Av. life 27 years	FA	108	4 3 4	4 0 2
Sudan 4% 1974 Red. in part after 1950	MN	106	3 15 6	3 6 9
Tanganyika 4% Guaranteed 1951–71	FA	107	3 14 9	3 4 8
L.P.T.B. 4½% "T.F.A." Stock 1942–72	JJ	103	4 7 5	3 0 0
Lon. Elec. T. F. Corpn. 2½% 1950–55	FA	92	2 14 4	3 2 11
COLONIAL SECURITIES				
*Australia (Commonw'th) 4% 1955–70	JJ	104⅛	3 16 7	3 12 1
Australia (Commonw'th) 3% 1955–58	AO	90⅜	3 6 4	3 14 1
*Canada 4% 1953–58	MS	106¼xd	3 15 1	3 8 2
*Natal 3% 1929–49	JJ	98	3 1 3	3 5 6
*New South Wales 3½% 1930–50	JJ	98½	3 11 1	3 13 8
*New Zealand 3% 1945	AO	97⅛	3 1 6	3 11 1
Nigeria 4% 1963	AO	105	3 16 2	3 13 7
Queensland 3½% 1950–70	JJ	88⅛	3 19 1	4 3 7
*South Africa 3½% 1953–73	JD	102	3 8 8	3 6 2
*Victoria 3½% 1929–49	AO	99½	3 10 4	3 11 2
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	84	3 11 5	—
Croydon 3% 1940–60	AO	93	3 4 6	3 9 10
*Essex County 3½% 1952–72	JD	102	3 8 8	3 6 2
Leeds 3% 1927 or after	JJ	84	3 11 5	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	94	3 14 6	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	70½xd	3 10 11	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	84xd	3 11 5	—
*London County 3½% Consolidated Stock 1954–59	FA	103	3 8 0	3 4 7
Manchester 3% 1941 or after	FA	83	3 12 3	—
*Metropolitan Consd. 2½% 1920–49	MJSD	98xd	2 11 0	2 14 7
Metropolitan Water Board 3% "A" 1963–2003	AO	88	3 8 2	3 9 5
Do. do. 3% "B" 1934–2003	MS	88½xd	3 7 10	3 9 0
Do. do. 3% "E" 1953–73	JJ	92	3 5 3	3 8 2
*Middlesex County Council 4% 1952–72	MN	103½	3 17 4	3 13 2
* Do. do. 4½% 1950–70	MN	106	4 4 11	3 16 5
Nottingham 3% Irredeemable	MN	83	3 12 3	—
Sheffield Corp. 3½% 1968	JJ	101	3 9 4	3 8 10
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	105½	3 15 10	—
Gt. Western Rly. 4½% Debenture	JJ	111	4 1 1	—
Gt. Western Rly. 5% Debenture	JJ	122½	4 1 8	—
Gt. Western Rly. 5% Rent Charge	FA	116	4 6 2	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	115	4 6 11	—
Gt. Western Rly. 5% Preference	MA	100½	4 19 6	—
Southern Rly. 4% Debenture	JJ	105½	3 15 10	—
Southern Rly. 4% Red. Deb. 1962–67	JJ	105½	3 15 10	3 12 8
Southern Rly. 5% Guaranteed	MA	114	4 7 9	—
Southern Rly. 5% Preference	MA	101½	4 18 6	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date ; in the case of other Stocks, as at the latest date.